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THE

REVISED STATUTES

OF THE

TERRITORY OF NEBRASKA,

In Force July 1, 1866,

WITH MARGINAL NOTES, SHOWING THE CONTENTS OF EACH SECTION,

AND

A FULL AND COMPLETE INDEX;

TO WHICH IS ADDED

AN APPENDIX,

EMBRACING ALL OF THE SPECIAL AND LOCAL LAWS PASSED AT THE
ELEVENTH SESSION OF THE LEGISLATIVE ASSEMBLY
OF THE TERRITORY OF NEBRASKA.

REVISED BY

E. ESTABROOK.

PUBLISHED BY AUTHORITY.

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REVISED STATUTES.

AN ACT

FOR REVISING, AMENDING, CONSOLIDATING AND RE-ENACTING THE CIVIL AND CRIMINAL CODES, AND THE LAWS OF A GENERAL NATURE, OF THE TERRITORY OF NEBRASKA.

Whereas, it is expedient that the general statutes of this territory should be consolidated and arranged in appropriate chapters and subdivisions, that omissions should supplied and defects amended, and that the whole uld be rendered plain, concise and intelligible, herefore,

Be it enacted, by the Council and House of Representatives of the Territory of Nebraska, in manner following, that is to say:

PART I.

CHAPTER I.

AGRICULTURE.

COUNTY BOARDS.

County clerk to draw order in favor of county society.

SECTION 1. Whenever twenty or more persons, residents of any county of the territory, shall organize themselves into a society for the improvement of agriculture within said county, and shall have adopted a constitution and by-laws agreeably to the rules and regulations to be furnished by the Nebraska territorial board of agriculture hereafter created, and shall have appointed the usual and proper officers; and when the said society shall have raised and paid to the treasurer, by voluntary subscription, or by fees imposed upon its members, any sum of money in each year not less than fifty dollars, and whenever the president of said society shall certify to the county clerk the amount thus paid, attested by the oath of the treasurer before a magistrate, it shall be the duty of said county clerk to draw an order on the treasurer of the county in favor of the president and treasurer of said society for a sum equal to the amount thus raised: *Provided*, it does not exceed two cents to each inhabitant of said county, upon a basis of the last vote cast for delegate to Congress, allowing five inhabitants for each vote then cast; but not to exceed in any county the sum of two hundred dollars, and it shall be the duty of the treasurer of said county to pay the same.

Not to exceed two cents to each inhabitant.

Premiums to be offered and awarded county societies.

SEC. 2. It shall be the duty of the several county societies which may be formed under the provisions of the preceding section, annually to offer and award premiums for the improvement of soil, crops, tillage, manures, implements, stock, articles of domestic industry, and such other articles, productions and improvements as they may deem proper, and to perform all such acts as they may deem best calculated to promote the agricultural and manufacturing interest of the county and of the territory. And it shall also be their duty so to regulate the amount of premiums, and the different grade of the same, as to enable farmers of small as well as large means to compete therefor, and in making their awards special reference shall be had to the profits which may accrue, or be likely to accrue, from improved modes of raising the crops, or of improving the soil or stock, or of the fabrication of the articles thus offered, with the intention that the premiums shall be given for the most economical mode of improvement. And all persons offering to compete for premiums or improved modes of tillage, or the production of any crops or other articles, shall be required, before such premiums are adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage or production, and the expense and value of the same, with a view of showing accurately the profits derived or expected to be derived therefrom.

Report of awards, etc., to be made annually by county society, and forwarded to territorial society.

SEC. 3. It shall be the duty of each county society to publish annually a list of the awards, and an abstract of the treasurer's account in such manner as the society may direct, and to make a report of their proceedings during the year, and a synopsis of the awards for the improvements in agriculture and manufactures, together with an abstract of the several descriptions of these improvements, and also to make a report of the condition of agriculture in that county, which report shall be made out in accordance with the rules and regulations of the territorial board of agriculture, and shall be forwarded to the territorial board at their annual meeting, in each year after the organization of the territorial board.

County societies declared bodies corporate.

SEC. 4. All county agricultural societies which may be organized under this chapter, shall be, and the same are hereby declared, bodies corporate and politic, and as such shall be capable of suing and being sued, and capable of holding in fee simple such real estate as they may purchase or receive by donation, not to exceed eighty acres of land and the buildings thereon.

Deeds, etc., made to and by county societies valid.

SEC. 5. All deeds, conveyances, and other agreements made to and by such county agricultural societies for the purchase of real estate, shall be good and valid in law and equity, and shall vest the title in fee simple in such societies to said real estate.

Sites for fairs, what amount may be paid by county commissioners for.

SEC. 6. In all cases when such county agricultural societies shall purchase real estate as sites whereon to hold fairs, the county commissioners of such counties may, if they think it for the interest of the counties and societies, pay out of the county treasuries of such counties the same amount of money for the purchase and improvement of such sites as shall have been, or shall hereafter be, paid by such agricultural societies or individuals for such purpose.

When society dissolved, its interest in real

SEC. 7. In all cases when agricultural societies shall be dissolved, or cease to exist, in any county where payments estate, etc., to vest in county. have been made for real estate, or improvements upon such real estate, for the use of any agricultural society, then all such real estate and improvements shall vest in fee simple in the county making such payment.

TERRITORIAL BOARD.

Territorial agricultural society incorporated. SEC. 8. S. M. Kirkpatrick, O. P. Mason, C. H. Walker, George Crow, J. G. Miller, John Patrick, John Ritchie, John Cadmore, Samuel Maxwell, Elam Clark, Isaac Albertson, Amos Gates, George A. Hall, William Imelay, E. A. Allen, H. M. Reynolds, W. D. Scott, A. S. Holliday, John B. Bennett, B. Bates, Louis A. Walker, J. Sterling Morton, J. W. Hollingshead, G. P. Thomas, J. B. Stought, Henry Sprick, S. W. Kennedy, A. L. Childs, and Anderson Miller, be and the same are hereby created a body corporate, with perpetual succession, in the manner hereinafter described, under the name and style of the "Nebraska Territorial Board of Agriculture."

Shall meet and organize SEC. 9. It shall be the duty of said board, or any five or more of them, to meet at Omaha, as soon as said board, or any five or more of them, may agree, and organize by electing a president, secretary and treasurer, and such other officers as they may deem necessary; also, to determine by lot the time that each member shall serve, so that the term of service of one-half of the members shall expire annually on the day of the annual meeting. President may call meetings. And the president shall have power to call meetings of the board whenever he may deem it expedient.

Annual meetings. SEC. 10. There shall be held, at some central point in the territory, to be agreed upon by the board at their session, an annual meeting of the board, together with the president of each county society, or delegate therefrom, duly authorized, who shall, for the time being, be *ex officio* members of the territorial board of agriculture, for the purpose of deliberating and consulting as to the wants, prospects and condition of the agricultural interests throughout the territory; Proceedings and at such annual meeting the several reports from the subordinate societies shall be delivered to the president of the territorial board, and the said president and delegates shall, at this meeting, elect suitable persons to fill all vacancies in the territorial board of agriculture.

Board to report to legislative assembly.

SEC. 11. It shall be the duty of said board to make an annual report to the legislative assembly of the territory, embracing the proceedings of the board for the past year, and an abstract of the proceedings of the several subordinate societies, so as to give a general view of the condition of agriculture throughout the territory, accompanied by such recommendations as they may deem important and useful. For the purpose of aiding agricultural pursuits in this territory, the sum of three hundred dollars be and is hereby appropriated out of the territorial treasury, and annually hereafter, subject to the order of the president and secretary of the territorial board of agriculture. Said amount to be used in the payment of premiums awarded by said board in the various branches of agriculture, and for no other purpose: *Provided*, That should the board fail in any year to offer and award premiums for the encouragement of agricultural pursuits, then the benefits of this chapter shall not be available that year.

Annual appropriation to aid agricultural pursuits.

LIVE FENCES.

Any person may plant hedge, etc., precisely on line of road.

SEC. 12. Whenever any owner or owners, occupier or occupiers of any lands bordering upon any public road or highway, except a street or alley in a town, may wish to plant and cultivate any hedge, or live fence, along the margin of his, her or their land, it shall be lawful for any such person or persons to set and plant any such hedge or live fence, precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of said road, and such protection fence, when placed opposite any live fence or hedge, actually set and planted, shall be permitted by the county commissioners, and all other persons, to remain for the term of seven years: *Provided*, That the county commissioners may grant permission in writing to the owner or owners of any live fence or hedge to continue such protection fence any term of time which they may deem necessary.

Protection fence.

County commissioners may permit to stand seven years.

May grant unlimited permission as to time.

ENCLOSURES AND PARTITION FENCES.

Adjoining occupants shall maintain just proportion of fence.

SEC. 13. When two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner or owners of either of the adjoining lands shall choose to let his lands lie open.

Persons enclosing an enclosure, another shall pay just proportion of division fence.

SEC. 14. When any person shall have chosen to let his lands lie open, if he shall afterward enclose the same, or if the owner of the lands adjoining upon the enclosure of another shall enclose the same upon the enclosure of another, he shall pay to the owner of the adjoining lands a just proportion of the value, at the time, of any division fence that shall have been made by such adjoining owner, or he shall immediately build his proportion of such division fence.

Value of fence and proportion of each determined by fence viewers.

SEC. 15. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him in case of his enclosing his land, shall be determined by any two fence viewers of the precinct, in the county.

Fence viewers to settle disputes.

SEC. 16. If disputes arise between the owners of adjoining lands, concerning the proportion of fence to be made or maintained by either of them, such dispute shall be settled by the fence viewers of the county; and in such case it shall be the duty of the fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each.

How selected.

SEC. 17. When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one, and if either neglect, after eight days notice, to make such choice, the other party may select both.

Proceedings by.

SEC. 18. The two fence viewers so chosen, shall examine the premises and hear the allegations of the parties; in case of their disagreement, they shall select another fence viewer to act with them, and the decision of any two of them shall be final upon the parties to such disputes, and upon all parties holding under them.

Decision, what to contain, and where filed.

SEC. 19. The decision of the fence viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and their decision upon any of the points in dispute between the parties, submitted to them as aforesaid, shall be forthwith filed in the office of the county clerk.

Neglect or refusal to repair, etc.

SEC. 20. If any person who is liable to contribute to the erection or reparation of a division fence, shall neglect or refuse, for the period of four weeks after notice in writing so to do, to make and maintain his proportion of such fence, the party injured may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him with cost of suit, and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which thereby accrue, to be determined by any two fence viewers selected as above provided, and the fence viewers shall reduce their appraisement of damage to writing, and sign the same.

Division fence, when to be removed.

SEC. 21. If any person who shall have made his proportion of division fence, shall be disposed to remove his fence and suffer his land to lie open, after having first given the adjoining owner at least sixty days previous notice in writing of his intention so to do, he may, at any time between the first day of December, in any year, and the first day of April following, but at no other time, remove the same.

Removal without notice, consequence.

SEC. 22. If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with costs of suit.

When fence destroyed by fire or flood.

SEC. 23. Whenever a division fence shall be injured or destroyed by fire, floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein, such requisition to be in writing, and signed by the party making the same.

When party injured may make fence at expense of party refusing.

SEC. 24. If such person shall neglect or refuse to make or repair his proportion of such fence for the period of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with cost of suit.

Fence viewers may examine witnesses.

SEC. 25. Fence viewers may examine witnesses on any and all questions submitted to them, and either of such fence viewers shall have power to issue subpœnas for, and administer oaths to, such witnesses.

Justices *ex officio* fence viewers.

SEC. 26. In all organized counties, justices of the peace shall be *ex officio* fence viewers of the county.

Fees of fence viewers.

SEC. 27. Fence viewers shall be entitled to one dollar per day each for the time necessarily spent as above provided, to be paid in the first instance by the party requiring the service; and all expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of the division fence, in which case the cost of view shall be paid by the party in default, and may be recovered as a part of the damage assessed.

Damage, how recovered.

SEC. 28. Damage accruing to any person or persons under the provisions of this chapter, may be recovered in a civil action, in any court of this territory.

Lawful fence, what constitutes.

SEC. 29. Any structure or hedge or ditch in the nature of a fence, used for purposes of enclosure, which is such as good husbandmen generally keep, shall be deemed a lawful fence.

Damage by domestic animals on land enclosed by lawful fence

SEC. 30. If any domestic animal break into any enclosure, the person injured thereby shall recover the amount of damage done, if it shall appear that the fence through which said animal broke was a lawful fence.

Tender of amount, effect of.

SEC. 31. If before trial the owner of such trespassing animals shall have tendered to the person injured, an amount, in lieu of damage and costs which may have accrued, which shall equal the amount of damage afterward awarded by the court or by the jury, or shall offer in writing to confess judgment for the same, and if, notwithstanding, the said injured person refusing said offer, cause the trial to proceed, he shall pay costs, and recover only the damage awarded.

Person planting crop, etc., on land not enclosed, liable for damages.

SEC. 32. If any person sow any grain, or plant any crop, without enclosing the same with a sufficient fence, as above provided, he shall be liable for all damages that any person or persons may sustain in consequence of such neglect to enclose the same.

SEC. 33. This subdivision shall not extend to or in any wise affect any county in this territory, in which horses, mules, cattle, sheep or swine, are restrained from running at large by reason of legislative enactment. Limitation as to extent of law.

SHEEP.

SEC. 34. It shall be unlawful for any person who is the owner or keeper of any buck sheep, to permit such sheep to run at large in the territory of Nebraska, between the fifteenth day of July and the fifteenth day of December in each year. Buck sheep restrained from running at large from 15th July to 15th of Dec.

SEC. 35. Any person violating the provisions of the foregoing section, shall, upon conviction before any court of competent jurisdiction, be fined in any sum not less than five dollars nor exceeding twenty dollars, and shall pay the costs of prosecution. Penalty for violation of foregoing section.

SEC. 36. Any person being guilty of a violation of the provisions of section thirty-four of this chapter, shall, in addition to the penalty prescribed in section thirty-five, be liable for all damages which may be committed, the same to be recovered by civil suit before any proper judicial tribunal. Further penalty.

WOLVES AND WILD CATS.

SEC. 37. Any person or persons killing wolves or wild cats within the boundaries of the territory of Nebraska, and presenting the scalps of the same, with the two ears and face down to the tip of the nose, to the county clerk of the county in which the same were killed, with satisfactory proofs, upon oath or otherwise as the clerk may require, that the same were killed within the boundaries of the territory of Nebraska, shall be entitled to the following bounties: For every wolf so killed, seventy-five cents; and for every wild cat so killed, one dollar. Certificates of such bounties when allowed, shall be issued by the county clerk to the person entitled thereto, and upon the same being filed with the territorial auditor, he shall draw his warrant upon the territorial treasurer for the amount so allowed.

SEC. 38. It shall be the duty of the county clerk to give such persons, on receiving said scalps, a certificate of Clerk to give certificate.

the number and kind accepted by him for bounty, and deface such scalps by cutting the same in two parts so as to separate the two ears, and he shall keep the same in his office, until the next meeting of the county commissioners, for their examination and count, and such board of commissioners shall keep a record of the number counted.

Proviso.

SEC. 39. *Provided, however*, That no person shall be allowed to present the scalp of any wolf or wild cat to the county clerk of any county, except wherein the same was killed; and any person driving, baiting, enticing, bringing or taking a wolf or wild cat from outside the boundaries of this territory, into any organized county within the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than five dollars nor more than fifty dollars, for each and every offense so committed.

CHAPTER II.

APPORTIONMENTS.

Representative districts.

SECTION 1. Hereafter, the house of representatives of the territory of Nebraska shall be composed of thirty-nine members, to be apportioned among the several counties as follows:

Richardson county, four members.
Pawnee county, one member.
Gage and Jones counties, jointly, one member.
Nemaha county, four members.
Otoe county, five members.
Cass county, four members.
Johnson county, one member.
Lancaster county, one member.
Clay, Lancaster, Seward, and Saunders counties, jointly, one member.
Saline, Butler, Lincoln, and Kearney counties, jointly, one member.
Sarpy county, two members.
Douglas county, five members.

Dodge county, one member.

Platte county, one member.

Platte, Hall, Buffalo, and Merrick counties, jointly, one member.

Washington county, two members.

Burt, and Cuming counties, jointly, one member.

Dakota county, one member.

Dakota, Dixon, Cedar, and L'Eau qui Court counties, jointly, one member.

Dixon, Cedar, and L'Eau qui Court counties, jointly, one member.

Council districts.

SEC. 2. The counties of Dakota, Dixon, Cedar and L'Eau qui Court, shall constitute the first district, and be entitled to one member of the council.

The counties of Washington, Burt and Cuming, shall constitute the second district, and be entitled to one member.

The county of Douglas, shall constitute the third district, and be entitled to two members.

The counties of Sarpy, and Dodge, shall constitute the fourth district, and be entitled to one member.

The counties of Platte, Merrick, Hall, Buffalo, Kearney, and Lincoln, shall constitute the fifth district, and be entitled to one member.

The county of Cass, shall constitute the sixth district, and be entitled to one member.

The counties of Cass, Lancaster, Saline, Saunders, and Seward, shall constitute the seventh district, and be entitled to one member.

The county of Otoe, shall constitute the eighth district, and be entitled to two members.

The county of Nemaha, shall constitute the ninth district, and be entitled to one member.

The county of Richardson, shall constitute the tenth district, and be entitled to one member.

The counties of Pawnee, Gage, Johnson, Clay, and Jones, shall constitute the eleventh district, and be entitled to one member.

CHAPTER III.

ATTORNEYS.

Qualifications required of applicants for admission to the bar.

SECTION 1. No person shall be admitted to practice as an attorney in the supreme or district courts of this territory hereafter, unless such person shall have previously studied in the office of a practicing attorney, for the period of two years, and pass a satisfactory examination upon the principles of the common law, under the direction of the court to which application is made, and it is shown to the satisfaction of said court that such applicant sustains a good moral character.

SEC. 2. The supreme court may, on motion, admit any practicing attorney of the district court to practice in the supreme court, upon his taking the usual oath of office.

SEC. 3. Any practicing attorney in the courts of record of another state or territory, having professional business in either the supreme or district courts, may, on motion, be admitted to practice in either of the courts, upon taking the oath as aforesaid.

Form of oath.

SEC. 4. The form of the oath aforesaid shall be in substance, as follows:

> You do solemnly swear, that you will support the constitution of the United States and the laws of this Territory, and that you will faithfully discharge the duty of an attorney and counselor of this court, according to the best of your ability, and shall further take and subscribe the oath prescribed by the laws of the United States, relating to attorneys.

Duties of attorneys.

SEC. 5. It is the duty of an attorney and counselor —

First. To maintain the respect due to the courts of justice and to judicial officers.

Second. To counsel or maintain no other actions, proceedings, defenses, than those which appear to him legal and just, except the defense of a person charged with a public offense.

Third. To employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth.

Fourth. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secrets of his clients.

Fifth. To abstain from all offensive practices, and to advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

Sixth. Not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest.

Penalties for certain offenses.

SEC. 6. An attorney and counselor who is guilty of deceit or collusion, and consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

Powers of attorneys.

SEC. 7. An attorney or counselor has power —

First. To execute, in the name of his client, a bond for an appeal, certiorari, writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced.

Second. To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

Third. To receive money, claimed by his client in an action or proceeding, during the pendency thereof or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Attorney's lien.

SEC. 8. An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party.

Attorneys of other

SEC. 9. Any person producing a license, or other satisstates and territories may be admitted. factory voucher, proving that he has been regularly admitted an attorney at law, in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counselor and attorney at law in any court in this territory, without examination.

Parties may act as attorneys. SEC. 10. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending in their proper persons; and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counselor at law, by the laws of this territory, so as to subject them to further examination, or make it necessary for them to renew their license.

Who shall not practice. SEC. 11. No person shall be permitted to practice as an attorney of the courts of this territory, who holds a commission as supreme or district judge, or judge of probate, sheriff, clerk, constable or jailor, in the county where they hold their respective offices, or clerks of supreme or district courts in the territory.

Penalty when attorney fails to pay over. SEC. 12. When an attorney, residing and practicing in any state or territory, receives money upon demands left with him for collection in such state or territory, which he omits to pay over, he is liable to arrest here in an action brought to recover money.

Filing papers. SEC. 13. Upon filing original papers in any case, it shall be his duty to indorse thereon his name.

Duty of attorney to act as guardian. SEC. 15. It shall be the duty of every attorney to act as the guardian of an infant defendant in any suit pending against him, when appointed for that purpose by an order of the court; shall prepare himself to make the proper defense, to guard the rights of such defendant, and shall be entitled to such compensation as the court shall deem reasonable.

PROSECUTING ATTORNEYS.

Duty of prosecuting attorney. SEC. 15. It shall be the duty of the prosecuting attorney to prosecute, for and in behalf of the territory, all complaints, indictments, and all suits and controversies in which the territory shall be a party, and such other suits, matters and controversies as shall be directed by law, within the county for which he shall have been elected, in the district court, and probate court, and in the supreme court, in all cases arising in his county; and to pay over forthwith to the county treasurer all moneys belonging to said county, which he may collect, or which may come into his hands by way of fines, forfeitures, costs or otherwise, and take the treasurer's duplicate receipts therefor, one of which he shall file with the commissioners of his county; and upon failure to pay over said moneys as herein required, said prosecuting attorney shall be removed from office in manner as prescribed in the twentieth section of this chapter.

May be removed for failure to pay over.

Shall take oath and give bond.

SEC. 16. Each and every prosecuting attorney hereafter elected, shall, before entering upon the duties of his office, take an oath or affirmation, to be indorsed upon his certificate of election, to support the constitution of the United States, the organic law of this territory, and that he will faithfully discharge the duties of his office. And said prosecuting attorney shall, before entering upon the duties of his office, give bond, with sufficient sureties, to be approved by the county commissioners, to the territory of Nebraska, in any sum not less than five hundred dollars, conditioned that he will, according to the best of his skill and abilities, faithfully discharge all duties enjoined on him by law, and also, that he will honestly and faithfully pay over all moneys by him received as such prosecuting attorney, in the manner directed by law, which said bond shall be filed with the county commissioners.

To examine official bonds; allowance therefor.

SEC. 17. It shall be the duty of the prosecuting attorney of each county, upon the election of any officer therein required by law to give bonds, to prepare all such bonds in legal form, and take special care that the forms of the same, and every requisite thereof, are in conformity to law; and no such bond shall be accepted and approved until the same has been so inspected by the prosecuting attorney; and the county commissioners shall make such an allowance to the prosecuting attorney for his services under this section as shall be just and reasonable.

Court may appoint assistant; allowance.

SEC. 18. On application of any prosecuting attorney, during the term of the district court, the court may, if they think necessary, appoint an assistant prosecuting attorney, for whose services the court in which the service shall be rendered, shall make such allowance as shall be deemed just and reasonable.

In case of vacancy, court to appoint.

SEC. 19. If the office of any prosecuting attorney in any county in this territory shall at any time become vacant by death, disability, removal, or resignation, or from any other cause whatever, the district court shall appoint a special prosecuting attorney, who shall give bond as required by the sixteenth section of this chapter, and said special prosecuting attorney shall hold his office until the proper prosecuting attorney shall resume his duties; and in case of any permanent vacancy, until the next October election succeeding his appointment, and until his successor shall be elected and qualified; and he shall perform the same duties and receive the same compensation therefor as is provided for in this chapter.

Duty of district court in case of charge of neglect.

SEC. 20. It shall be the duty of the district court in the several counties in this territory, upon complaint in writing in due form of law, signed by the person or persons making such complaint, and containing distinct charges and specifications against the prosecuting attorney of said county for a wanton and willful neglect of duty as prosecuting attorney for said county, to cause such complaint to be filed and entered upon its docket, and notice thereof to be given to the prosecuting attorney so charged; and upon the answer thereto of the prosecuting attorney, to be filed within a reasonable time, such as the court shall fix and limit, to proceed to hear the evidence in relation thereto; and if it shall appear, to the satisfaction of said court, that the prosecuting attorney thus charged has wantonly and willfully neglected to perform his duties as required by law, the court shall, at the cost of said prosecuting attorney, remove him from office, and shall forthwith proceed to appoint another to fill the vacancy until the next annual election; but if the court shall, upon hearing, be of opinion that said prosecuting attorney is not guilty, then the court shall enter up judgment for costs against the person or persons making such complaint, to be recovered as upon judgments at law.

Who eligible.

SEC. 21. No person shall be eligible as a candidate for, or be elected to, the office of prosecuting attorney who is not an attorney and counselor at law, duly licensed to practice in this territory; and no prosecuting attorney elected in pursuance of this chapter shall hold the office of county treasurer, county auditor, county recorder, county surveyor or sheriff.

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CHAPTER IV.

AUDITOR, SCHOOL COMMISSIONER, AND TERRITORIAL TREASURER.

Auditor shall reside and keep his office at the capital.

SECTION 1. The territorial auditor and school commissioner shall reside and keep his office at the seat of government.

Auditor declared the general accountant of the territory.

SEC. 2. The auditor is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office, or kept by some other officer or person.

Duties of the auditor.

SEC. 3. It shall be the duty of the auditor to digest, prepare and report to the governor of the territory, at least twenty days before the commencement of each regular session of the legislative assembly—

First. A full and detailed statement of the condition of the treasury, and the amount of the expenditures for the last fiscal year.

Second. A full and detailed statement of the public debt, showing fully all liabilities and resources of the territory.

Third. Estimates of the revenue and expenditures for the next succeeding year.

Fourth. Such plans as he may deem expedient for the support of public credit, for lessening the public expenses, for using the public money to the best advantage, for promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the territory, and for securing uniformity and efficiency in the levying and collection of taxes, and systematizing the work to be done by officers having duties to perform under the revenue and school laws.

Fifth. A tabular statement, showing separately the whole amount of each appropriation of money, made by law, the amount paid under the same, and the balance unexpended.

Sixth. A tabular statement, showing separately the amount of money received into the territorial treasury, from all sources in the preceding fiscal year, the amount received from each county, and for what years paid, the amount of penalties and interest reported collected on delinquent taxes, and the balance due from each county, on account of taxes, for each year for which such balances may be due.

Seventh. A tabular statement, showing the whole number of acres of land and value, total value of town lots, and the whole number and value of each item of taxable property returned by the several assessors or county clerks to the territorial board of equalization.

Further duties of auditor.

SEC. 4. It shall be the duty of the auditor —

First. To audit, adjust and settle all claims for services rendered, or expenditures made for the benefit of the territory, provided such services are rendered or expenditures made by authority of law, except only such claims as may be expressly required by law to be audited and settled by other officers or persons.

To draw warrants.

Second. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided for by law, and all warrants so drawn shall bear upon their face a reference to the law authorizing the drawing of the same, naming the fund out of which it shall be paid, and shall be countersigned by the territorial treasurer before it is delivered to the party in whose favor it is drawn.

To settle with collectors of revenue.

Third. To audit, settle and adjust the accounts of all collectors of the territorial revenues, and other holders of public money who are required by law to pay the same into the territorial treasury.

To correct errors, etc.

Fourth. Whenever it is ascertained that by mistake or otherwise, any county treasurer, or other person, has paid into the treasury any sum of money not due the territory, the auditor shall, on the territorial treasurer's certificate that such sum has been paid to him, and that it was not due the territory, refund to such county treasurer or other person the amount so paid, by drawing a warrant therefor upon the territorial treasury.

To keep an account between the territory and the territorial treasurer.

Fifth. To keep an account between the territory and the territorial treasurer, charging him with all amounts by him received, and giving him credit for all sums by him paid on account of indebtedness, redeemed or otherwise, in accordance with law.

To keep accounts between the territory and states, etc.

Sixth. To keep an account of all debts and credits between the territory and the several states, and the United States, and with each county in the territory.

To direct prosecutions for official delinquencies.

Seventh. To direct prosecutions in the name of the territory for all official delinquencies, in relation to the assessment, collection and payment of the revenue, against all persons who by any means become possessed of public money or property, due or belonging to the territory, and fail to pay over or deliver the same, and against all debtors of the territory; and it shall be the duty of the auditor, if necessary, to employ a competent attorney to prosecute all such suits, who shall be allowed for his services such fees as the district judge of the proper district shall direct, to be paid out of the territorial treasury on the warrant of the auditor.

To procure abstracts of lands, etc.

Eighth. To procure from the proper officers an abstract and description of all lands within the territory not yet procured; and annually hereafter, abstracts and descriptions of such lands as shall become taxable, the expense of all which shall be paid out of the territorial treasury, and which lists the auditor shall transmit to the clerks of the counties in which such lands may be situated.

To give information to legislature.

Ninth. To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or in regard to any duty of his office.

To furnish offices, etc., for himself and territorial treasurer.

Tenth. To furnish offices for himself and the territorial treasurer, and all fuel, lights, books, blanks, forms, paper and stationery required for the proper discharge of the duties of their offices, and also such books, blanks, etc., as may be necessary for the use of county clerks, treasurers, assessors, or other officers having duties to perform under the revenue and school laws, which shall be sent, upon the requisition of the county commissioners, to the clerks of the proper counties, for distribution to the several officers; the expense of all which shall be paid out of the territorial treasury.

Shall settle with county treasurers, etc.

SEC. 5. All county treasurers, or other persons who are by law required to make settlements or pay money into the territorial treasury at certain specified times, shall, on or before such date, exhibit their accounts and vouchers to the territorial auditor, who shall, as soon as practicable, examine, adjust and settle such accounts, and report to the territorial treasurer the balance found due the territory, and if any county treasurer or other person so required by law to pay funds into the territorial treasury, shall fail to make the settlement herein required at the proper time, or to pay the amount so found due to the territorial treasurer, and produce his receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the territory all collection fees and mileage allowed by law, and also a penalty of ten per cent. on the amount wrongfully withheld, and interest on the whole at the rate of fifteen per cent. per annum from the time the same should have been paid until actual payment, and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent or otherwise, according to law.

Shall examine all claims against the territory.

SEC. 6. All persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed within two years after such claims shall accrue; and in all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory as a set-off, but such as has been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor, by absence from the territory, sickness or unavoidable accident: *Provided*, The auditor shall in no case audit a claim or set-off which is not provided by law.

May examine parties under oath.

SEC. 7. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses or others, on oath or affirmation, touching any matter material to be known in the settlement of such account.

Accounts, etc., to be presented at auditor's office; copies of same.

SEC. 8. All accounts, vouchers and documents, settled or to be settled by the auditor, shall be preserved in his office; and copies thereof, authenticated by his official seal, shall be given to any persons interested therein who shall require the same, on the payment to the auditor of ten cents for every one hundred words in such copies.

In what cases warrants may be drawn on treasury.

SEC. 9. In all cases of grants, salaries, pay and expenses ascertained and allowed by law, found due to individuals from the territory when audited, the auditor shall draw warrants upon the treasury for the amount; but in cases of claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or countersigned or paid by the territorial treasurer, but all such claims shall be reported to the next legislative assembly, with such recommendation as the auditor may deem just.

Decisions of the auditor may be referred to legislature.

SEC. 10. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reason for his decision, to the legislative assembly.

Auditor to report to legislature all county treasurers who have failed to settle.

SEC. 11. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all county treasurers, and other persons holding the public money, whose accounts remain unsettled for six months after they should have been settled according to law, or remain unsettled at the close of the fiscal year, with the reason, if any, therefor.

To receive an annual salary of $1,000.

SEC. 12. The auditor shall receive for his services as auditor and school commissioner, an annual salary of one thousand dollars, to be audited by the territorial treasurer, and paid by him out of any money in the treasury.

Shall have power to administer oaths, in matters pertaining to his office.

SEC. 13. The auditor shall have power to administer all oaths or affirmations required by law, in matters pertaining to the duties of his office, and may do and perform all acts or duties authorized to be performed by notaries public by the laws of the territory, subject, however, to such restrictions as are provided by law for notaries.

His books, papers, etc., open to inspection of legislature.

SEC. 14. All the books, papers, letters and transactions pertaining to the office of auditor, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

May appoint a deputy.

SEC. 15. The auditor shall have power to appoint a deputy, who shall give a bond to the territory of Nebraska, with good and sufficient security in the same sum required of the auditor, which bond shall be approved by the governor and deposited with the secretary of the territory, and when so appointed, the deputy may do and perform, in the absence of the auditor, such acts, herein authorized and required of the auditor, as the auditor may authorize him to do, subject to the same restrictions: *Provided, however,* That the territory shall not be liable for, or pay, any salary to such deputy other than the salary provided for the auditor for his services, unless allowed by the legislative assembly.

Proviso as to pay of deputy.

Auditor to keep a seal.

SEC. 16. The auditor shall keep a seal of office for the authentication of all papers, writings and documents required to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

Treasurer shall keep office at capital.

SEC. 17. The territorial treasurer shall reside and keep his office at the seat of government.

Duties of treasurer.

SEC. 18. It shall be the duty of the territorial treasurer —

First. To receive and keep all moneys of the territory not expressly required to be received and kept by some other person.

Second. To disburse the public money upon warrants drawn upon the territorial treasury according to law, and not otherwise.

Third. To keep a just, true and comprehensive account of all moneys received and disbursed.

Fourth. To examine all warrants drawn by the auditor, and, if there is sufficient money standing to the credit of the fund against which the warrant is drawn, to pay the same, he shall countersign it, and charge against such fund; but if there is not money sufficient to pay the warrant standing to the credit of the fund, he shall reject it, and shall neither countersign nor pay it; and no territorial warrant hereafter issued shall be valid without being countersigned by the treasurer as herein provided.

Fifth. To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them.

Sixth. To render a full statement to the auditor of all moneys received by him from whatever source; if on account of revenue, for what years; of all penalties and interest on delinquent taxes reported to, or accounted for, to him, and of all disbursements of public funds; with a list in numerical order of all warrants redeemed, the name of the payee, amount, interest and total amount allowed thereon; with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June and September, and oftener, if required.

Seventh. To report to the legislative assembly as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury and its operations for the preceding fiscal year.

Eighth. To give information in writing to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office.

Ninth. He shall account for and pay over all moneys received by him as such treasurer, to his successor in office, and deliver all books, vouchers and effects of office to him, and such successor shall receipt therefor.

His books, papers, etc., to be open to inspection of legislature.

SEC. 19. All the books, papers, letters and transactions pertaining to the office of treasurer, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, to examine and settle all accounts, and to count all moneys; and when the successor of any such treasurer shall be elected and qualified, the territorial auditor shall examine and settle all the accounts of such treasurer, remaining unsettled, and give him a certified statement showing the balance of moneys, securities and effects, for which he is accountable, and which have been delivered to his successor, and report the same to the legislative assembly.

Shall give duplicate receipts for money paid into treasury.

SEC. 20. The treasurer shall give duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the amount to the territorial treasurer.

May administer oaths in certain cases.

SEC. 21. The treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

Shall keep a seal of office.

SEC. 22. The treasurer shall keep a seal of office for the authentication of all papers, writing and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence, the same as the original papers and documents.

Penalty for refusal to pay a warrant when there is a fund for that purpose in his hands.

SEC. 23. If the territorial treasurer shall willfully refuse or neglect to pay any warrant lawfully drawn upon the treasury, when the money for the payment of the same is in the treasury, he shall forfeit and pay fourfold the amount, to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide.

May appoint a deputy.

SEC. 24. The treasurer shall have power to appoint a deputy, who shall give a bond to the territory of Nebraska with good and sufficient security, to be approved by the governor, in the sum of ten thousand dollars, which bond, together with a copy of his appointment and oath of office, the deputy shall deposit in the office of the secretary of the territory, and the said deputy may do and perform, in the absence of the treasurer, all of the acts and duties that he may be authorized to perform by the treasurer, subject to the same restrictions as the treasurer, and the treasurer shall be responsible for all the official acts of his deputy: *Provided, however*, That the deputy treasurer shall not receive any compensation from the territory.

Proviso as to pay.

SEC. 25. The treasurer shall receive an annual salary of four hundred dollars, to be audited and allowed by the auditor.

Annual salary of treasurer, $400.

SEC. 26. The bond of the auditor and school commissioner, and territorial treasurer, shall be filed with the secretary of the territory, and shall be by him recorded.

SEC. 27. The auditor and territorial treasurer shall severally deliver over to their successors in office all books, papers, records, vouchers, presses and furniture appertaining to their offices, respectively.

SEC. 28. The fiscal year shall commence on the first day of December in each year, and end on the thirtieth day of November in each year.

CHAPTER V.

BONDS.

OVERDRAWING COUNTY FUNDS.

SECTION 1. All debts heretofore incurred by the county commissioners of any county, acting in good faith, and duly recorded at the time on their books, shall be deemed valid, and the county shall be held liable for the same.

Debts incurred by county commissioners declared valid.

SEC. 2. It shall not be lawful for any board of county commissioners to issue any warrant or order, on the county treasurer, for any sum or sums of money exceeding in the aggregate the amount said board have levied by tax for the current year.

Orders on county treasurer not to exceed amount of tax levied for current year.

SEC. 3. In order to guard against any such overdraft, each order drawn on the county treasurer shall express,

What each order to express on its face.

plainly on its face, the amount of tax levied for the year, and the amount already expended.

When order not chargeable against county, but collectable from county commissioners.

SEC. 4. Any order drawn after the amount levied for the year is exhausted, shall not be chargeable as against the county, but may be collected by civil action from the county commissioners making such order, or either of them.

When question of tax shall be referred to vote of the people.

SEC. 5. If the county commissioners deem any expenditure necessary, greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case, four weeks notice of said election shall be given in each newspaper published in the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax, the county commissioners shall cause the same to be levied and collected in the same manner as the annual tax, and, if possible, at the same time.

Amount levied in addition to current expenses.

SEC. 6. The county commissioners of each county shall levy and collect, annually, in addition to the amount necessary to meet the expenses for the current year, an amount equal to the interest of all the debts of the county, and fifteen per cent. of the principal of all the county debts, and this amount shall be included with the annual tax, and collected therewith, and may be paid in county orders or warrants. This tax shall be considered a special sinking fund, and the county commissioners shall not draw on the county treasurer for the same, or any portion thereof.

OFFICIAL BONDS AND OATHS.

County commissioners to give bond.

SEC. 7. Every county commissioner hereafter elected or appointed shall give bond to the county, conditional that he shall faithfully fulfill the duties of his office, in the sum prescribed by law; and it shall be unlawful for any such commissioner to act prior to the time of giving such bond.

Bond of territorial treasurer, auditor and librarian.

SEC. 8. The territorial treasurer shall, before he enters upon the duties of his office, give bond in the sum of twenty-five thousand dollars. The territorial auditor shall give bond in the sum of ten thousand dollars. The territorial librarian shall give bond in the sum of five thousand dollars. All of which said bonds shall be approved by the governor of the territory, and filed in the office of the territorial secretary within ten days after receiving their certificates of election.

Judge of probate.

SEC. 9. The judge of probate shall give bond in a sum not less than five thousand dollars nor more than ten thousand dollars, to be determined by the county commissioners.

County clerk.

SEC. 10. The county clerk shall give bond in a sum not less than three thousand dollars and not more than ten thousand dollars, to be determined by the county commissioners.

County treasurer.

SEC. 11. The county treasurer shall give bond in a sum not less than two thousand dollars nor more than twenty-five thousand dollars, to be determined by the county commissioners.

County surveyor.

SEC. 12. The county surveyor shall give bond in the sum of five hundred dollars.

County commissioners.

SEC. 13. The county commissioners shall give bond, each, in the sum of two thousand dollars.

Sheriff.

SEC. 14. The sheriff shall give bond in such sum as the county commissioners shall determine: *Provided*, That in no case shall the penal sum of such bond be fixed at a less sum than one thousand dollars.

Bond of county and precinct officers, to whom and when given by whom approved, and where filed.

SEC. 15. All bonds by county and precinct officers shall be given to the county in which said officers are elected respectively, and shall be given within ten days after the party required to give bond receives his certificate of election or appointment, and shall be approved by the county commissioners of such counties, and filed in the office of the county clerk, except the bonds required by law to be given by the county clerk and county commissioners, which last named bonds shall be approved by and filed with the probate judge of their respective counties.

Of territorial officers, to whom given.

SEC. 16. The bond of the district and territorial officers shall be given to the territory of Nebraska.

SEC. 17. All territorial, district, county, precinct, and especially, appointed officers, shall, before entering upon the duties of their office, take and subscribe to the following oath, namely:

Oath.

I do solemnly swear, that I will support the constitution of the United States, the organic act of this Territory, and faithfully and impartially perform the duties of the office of ——— according to law, and to the best of my ability. So help me God.

Which oath shall be indorsed upon their respective bonds.

Condition of official bond.

SEC. 18. All official bonds shall be made conditional for the faithful performance of all the duties required by law of the officer giving the bonds respectively.

Oath of members of legislature.

SEC. 19. Members of the legislative assembly shall take the oath required by section seventeen of this chapter, and a memorandum thereof shall be entered on the journals.

Officers to file and record bonds and give certified copies.

SEC. 20. The officers with whom any official bonds are required by law to be filed, shall carefully record and preserve the same in their respective offices, and shall give certified copies thereof when required, under the seal of their office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies in other cases.

Approval of bonds to be indorsed.

SEC. 21. The approval of each official bond shall be indorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until lawfully approved.

Bonds obligatory on principal and sureties

SEC. 22. All official bonds shall be obligatory upon the principal and sureties for the faithful discharge of all duties required by law of such principal, for the use of any person or persons injured by a breach of the condition of such bonds.

Not void for informality.

SEC. 23. No official bond shall be rendered void by reason of any informality or irregularity in its execution or approval.

By whom official bonds executed.

SEC. 24. All official bonds shall be executed by the principal named in such bonds, and at least two sureties, who shall be freeholders of the county to which such bonds are given.

CHAPTER VI.

CABINET.

SECTION 1. It shall be the duty of the secretary of the territory to issue a printed circular to the citizens of the territory, inviting them to deposit in the territorial cabinet such minerals and geological specimens as any citizen may find upon his premises, or in any portion of the territory. Secretary to issue circular.

SEC. 2. When any such specimen may be deposited in the territorial cabinet, it shall be the duty of the secretary of the territory to correctly label such specimen, and also enter the name of each donor and the character and quality of each specimen donated, in a book to be kept for that purpose. Specimen to be labeled.

SEC. 3. The circular issued by the secretary shall specify what description of minerals and geological specimens are desired. Circular what to specify.

SEC. 4. A part of the territorial library room may be used, temporarily, for a territorial cabinet. Room.

CHAPTER VII.

COMMON LAW OF ENGLAND.

SECTION 1. So much of the common law of England as is applicable, and not inconsistent with the constitution of the United States, with the organic law of this territory, or with any law passed or to be passed by the legislature of this territory, is adopted, and declared to be law within said territory. Common law in force.

CHAPTER VIII.

CORONERS.

Coroner to be elected.

SECTION 1. A coroner for each organized county shall be elected for two years, who shall, before entering upon the discharge of his official duties, give bond to the territory in the same sum required of the sheriffs, with at least two sufficient sureties, conditioned for the faithful performance of his official duties, which bond shall be approved by the county commissioners, and filed with the county clerk of the proper county.

To give bond.

When to act as sheriff.

SEC. 2. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff is elected and qualified.

Shall execute process when sheriff a party, or when certain affidavit filed.

SEC. 3. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case, or whenever affidavit shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the same powers, and proceed in the same manner, as prescribed for the sheriff, in the performance of similar duties.

Same.

SEC. 4. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done, and if like objection shall be made to the coroner, by either party, the court shall appoint some suitable person to whom such objection does not apply.

What affidavit to contain.

To hold inquest on dead bodies.

SEC. 5. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person, supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith six lawful men of the county to appear before the coroner, at a time and place named in the warrant.

SEC. 6. The warrant may be in substance as follows: **Warrant.**

THE TERRITORY OF NEBRASKA, }
——— COUNTY. }

To any Constable of said County:

In the name of the Territory of Nebraska, you are hereby required to summon forthwith six lawful men of your county, to appear before me at (*name the place*), on the —— day of ——, 18—, then and there to hold an inquest upon the dead body of ———, there lying, and by what means he died.

Witness my hand this —— day of ——, A. D. 18—.

———, *Coroner.*

SEC. 7. The constable shall execute the warrant, and make return thereof, at the time and place therein named. **Constable shall execute warrant.**

SEC. 8. If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to empannel them and administer the following oath in substance: **Proceedings if jurors fail to appear.**

You do solemnly swear, that you will diligently inquire and true presentment make, when, how and by what means the person whose body lies here dead came to his death, according to your knowledge, and the evidence given you. So help you God.

SEC. 9. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace. **May issue subpœnas.**

SEC. 10. An oath shall be administered to the witnesses in substance as follows: **Oath to witnesses.**

You do solemnly swear, that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

SEC. 11. The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, in substance as follows, and stating the matter in the following form, as near as practicable: **Inquisition of jury.**

THE TERRITORY OF NEBRASKA, }
——— COUNTY. }

At an inquisition holden at ———, in ——— county, on the —— day of ——, A. D. 18—, before me, ———, coroner of said county, upon the body of ———, lying dead, by the jurors whose names are hereto subscribed, the said jurors upon their oath, do say —— (*here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously.*)

In testimony whereof, the said jurors have hereunto set their hands the day and year aforesaid.

Attest: ———, *Coroner.*

Duty of coroner as to persons charged.

SEC. 12. If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace for examination, or if the person charged be not present, and the coroner believes he can be taken, he may issue a warrant to the sheriff or constable, requiring him to arrest the person and take him before a justice of the peace for examination.

Authority of coroner same as justice.

SEC. 13. The warrant of a coroner in the above stated cases, shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice, he shall be dealt with as a person held under a complaint in the usual form.

What warrant to contain.

SEC. 14. The warrant of the coroner shall recite substantially the verdict of the jury of inquest, and such warrant shall be a sufficient foundation for the proceedings of the justice instead of a complaint.

Return to district court.

SEC. 15. The coroner shall return to the district court the inquisition, the papers connected with the same, and a list of the names of witnesses who testify in the matter.

Dead body how disposed of.

SEC. 16. The coroner shall cause the dead body of any deceased person which he is caused to view, to be delivered to the friends of the deceased, if there be any, but if there be none, he shall cause the body to be decently buried, and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury by warrant drawn thereon.

In absence of coroner, sheriff to act.

SEC. 17. When there is no coroner, and in case of his absence, or inability to act, the sheriff of the county is authorized to discharge the duties of coroner in relation to dead bodies.

Subpœna for surgeon.

SEC. 18. If the coroner or jury deem it necessary, for the purposes of an inquisition, to summon a surgeon, the coroner shall issue his subpœna for the one preferred, the same as for any other witness.

SEC. 19. The coroner is hereby authorized and required, on a request of a majority of the coroner's jury, to issue his warrant for any person suspected of having committed the crime of murder, and hold such person on said warrant until the inquest over the body is closed.

SEC. 20. The verdict of the coroner's jury charging any person with murder or manslaughter, shall have the same force and effect as the finding of a bill of indictment by the grand jury, until the case shall have been investigated by a grand jury, and they shall have made their return thereon.

CHAPTER IX.

COUNTY COMMISSIONERS AND COUNTY CLERKS.

DUTIES.

Board of county commissioners, their qualifications, when and how elected

SECTION 1. There shall be a board of county commissioners, consisting of three persons in each organized county in this territory. Said commissioners shall have the qualifications of electors, and shall be elected by the qualified voters of the several counties respectively at the annual general election; and when a vacancy occurs in the office of county commissioner, sixty days or more before the expiration of his term of office, as hereinafter provided, the vacancy shall be filled by a special election.

County to be divided into three districts.

SEC. 2. Each county shall be divided into three districts by the first board of county commissioners elected under the provisions of this chapter, which districts may be numbered from one to three; and said districts shall not be changed oftener than once in three years by said board.

In each newly organized county the board of commissioners, at their first session after their election under this chapter, shall proceed to divide their respective counties into districts, as provided in the first part of this section, and one commissioner shall be elected from one of said districts at each general election thereafter, by the qualified voters of the whole county: *Provided*, That it shall not be lawful to change said district lines without a full board of commissioners existing at the time said lines are changed.

Term of office at first election, how determined.

SEC. 3. At the first election held to choose the board of commissioners under this chapter for any county, the person having the highest number of votes, shall continue in office for three years; the next highest, two years, and the next highest, one year; but if any two or more persons have the same number of votes, their term of office shall be determined by the board of canvassers, and each commissioner elected at the first general election, in pursuance of this chapter, shall hold his office for three, two and one years, as the case may be, and until his successor shall be duly elected and qualified, and each commissioner elected thereafter, in pursuance of the second section of this chapter, shall hold his office for three years, and until his successor is elected and qualified.

Each commissioner afterward elected to hold his office for three years.

Oath of office, before whom taken, and where filed.

SEC. 4. Each person elected county commissioner, shall, on receiving a certificate of his election, take an oath before some officer qualified to administer oaths, that he will support the constitution of the United States and the organic act of this territory, and perform faithfully all the duties enjoined by this chapter, which oath shall be certified to by the officer administering the same, under seal, and filed in the office of register of deeds for said county for record, in a book to be kept for that purpose, and when so recorded shall be sufficient authority for such commissioner to act.

When and where commissioners to hold sessions.

SEC. 5. The county commissioners shall meet and hold sessions for the transaction of county business at the court house in their respective counties, or at the usual place of holding courts, on the first Monday in January, April, July and October of each year, and may adjourn from time to time, and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county.

Special sessions, how called.

SEC. 6. The county clerk shall attend the sessions of said commissioners, and keep a true and full record of all their proceedings in a book to be provided for that purpose, and the sheriff of the county shall also, by himself or deputy, attend their sessions and execute their orders.

County clerk and sheriff to attend sessions.

SEC. 7. When two only of the commissioners of the board shall attend, and shall be divided on any question, they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

If only two commissioners, and they cannot agree, question to be deferred to full meeting.

SEC. 8. Copies of their proceedings, duly certified and attested by the county clerk, under seal, shall be received as evidence in all the courts of this territory.

Attested copy of proceedings, evidence.

SEC. 9. Any of said commissioners, or the county clerk, shall have power and authority to administer oaths or affirmations in all cases, and said commissioners shall have power to preserve order when sitting as a board, and may punish contempts by fine, not exceeding five dollars, or by imprisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by them, by attachment or other compulsory process, and when fines are assessed by them, the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines, within ten days after they are collected.

Commissioners and clerk may administer oaths.

Commissioners may punish for contempt.

When fines assessed, how collected.

SEC. 10. It shall be the duty of the county commissioners to allow and cause to be audited by their clerk, all claims against the county, and the oldest commissioner shall draw all warrants on the treasurer for money to be paid out of the county treasury, which warrant shall be countersigned by the county clerk, and sealed with the county seal. It shall be their duty to settle with the county treasurer, or with any and all persons who have received moneys belonging to the county or to the common school fund of the county, and to cause their accounts to be audited by the county clerk. They shall have power to

Claims, how audited, and warrants, how drawn.

Power to issue citation and remove from office.

issue citation to any county officer who is charged with malfeasance or nonfeasance or misfeasance, to show cause why he should not be removed from office, and to remove from office all county officers who shall be found by them guilty of corruption, extortion, bribery or willful neglect of duty.

Account to be kept with the treasurer.

SEC. 11. The said commissioners shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all orders returned and canceled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited in account; and the said commissioners shall, in their settlement with the treasurer, keep the general, special and road tax separate, that any citizen of the county may see how the same has been expended.

What to contain.

Book for recording orders.

SEC. 12. They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

Book of proceedings concerning roads.

SEC. 13. They shall keep a book for the entry of all proceedings and adjudications relating to the establishment, change or discontinuance of roads.

Book for entry of warrants on treasurer.

SEC. 14. They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant book; and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

SEC. 15. They shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county. May bring suit.

SEC. 16. Said commissioners shall have power to make all orders respecting the property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale and a deed is executed in the name of the county by the oldest commissioner, reciting the order, and signed and acknowledged by him for and on behalf of the county before some officer authorized to take acknowledgment of deeds: *Provided, however*, That the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as hereinafter provided, and sanctioned by a majority vote thereof. May make orders concerning property of county; sell and purchase grounds, etc. Sale of public grounds submitted to vote of the people.

Second. They shall have power to levy a tax not exceeding the amount now authorized by law to defray county expenses, and to liquidate county indebtedness. Power to levy tax.

Third. To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit. Audit accounts.

SEC. 17. Said commissioners shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts and expenditures of the county, and on the first Monday of July, annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their sessions, and at one public place in each precinct of the county. Duties in regard to fiscal concerns of the county.

SEC. 18. The said commissioners are authorized to procure for their county a copy of the field notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be con- Authorized to procure copy of field notes, and cause map to be constructed.

structed therewith, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

What questions may be submitted to the people.

SEC. 19. The said commissioners shall have power to submit to the people of the county, at any regular or special election, the question whether the county will borrow money to aid in the construction of public buildings, the question whether the county will aid or construct any road or bridge, or to submit to the people of the county any question involving an extraordinary outlay of money by the county; and said commissioners may aid any enterprise designed for the benefit of the county as aforesaid, whenever a majority of the people thereof shall be in favor of the proposition, as provided in this section.

Same.

SEC. 20. When county warrants are at a depreciated value, the said commissioners may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, for the special purpose of repaying borrowed money, or of constructing or ordaining to construct any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

Mode of submitting questions to the people.

SEC. 21. The mode of submitting questions to the people, contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

SEC. 22. When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes under section sixteen of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

When question involves the borrowing of money, what steps necessary.

SEC. 23. The rate of tax levied in pursuance of the last four sections of this chapter shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue law of this territory.

Extent of tax.

SEC. 24. The said commissioners, being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast are in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax, in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

Proceedings when the majority are for the proposition.

SEC. 25. Money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligation assumed is discharged.

Special fund

SEC. 26. The said commissioners shall hold their sessions with open doors, and transact all business in the most public manner; and where the county has no court house, or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to

Sessions to be held with open doors, and at suitable place.

County matters to be heard only in session.

the interest of the county shall be heard by the board of commissioners in session only, but they may continue any business from any regular session to an intermediate day.

Record.

SEC. 27. The books required to be kept by this chapter shall constitute the record of the board of county commissioners.

Power to erect, etc., public buildings.

SEC. 28. Said commissioners shall have authority and power to provide for the erection and repairing of court houses, jails, and other necessary buildings within and for the use of the county; and, to carry out the provisions of this section, they shall have power to make contracts on behalf of the county for the building or repairing of the same. They shall determine the amount of taxes to be levied for county purposes, according to the provisions of this chapter, and the revenue law of this territory.

Counties may sue and be sued.

SEC. 29. The counties in this territory may sue and be sued, plead and be impleaded, in any court in this territory; and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold and the purchase-money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase-money, shall be instituted in the name of the proper county.

Commissioners may employ attorney.

SEC. 30. Said commissioners shall have power to employ an attorney by the year, who shall be known as county attorney. But said commissioners shall, in no case, pay said attorney more than one hundred dollars per annum.

Judgment against county to be lien, etc., but execution to be stayed.

SEC. 31. When any judgment is obtained against the county, it shall be a lien upon the property of the county, and the public property shall be liable therefor; but no execution shall issue thereon until the board of county commissioners shall have had six months time to assess and collect a sufficient amount of revenue, under the provisions of this chapter, to pay off and discharge said judgment or judgments, in addition to the ordinary expenses of the county.

Appeal to district court.

SEC. 32. From all decisions of the board of commissioners, upon matters properly cognizable before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties, to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in said district court. Said bond shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein.

When and how taken.

SEC. 33. Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall, upon the filing of the bond, and the payment of his fees, allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

When appeal to be filed.

SEC. 34. Said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term.

To be heard *de novo.*

SEC. 35. All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo.*

Power of district court therein.

SEC. 36. The district court may make a final judgment and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by mandamus or attachment, as for contempt.

Certain officers to settle with commissioners.

SEC. 37. All treasurers, sheriffs, clerks, constables, and other officers, chargeable with money belonging to any county, shall render their accounts to, and settle with, the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Proceedings if any person thus refuse to account.

SEC. 38. If any person thus chargeable, shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor.

Same. SEC. 39. In such case, the board of commissioners shall refuse such delinquent any commission, and such delinquent shall forfeit and pay to the county a penalty of twenty per cent. on the amount found due the county.

Compensation of county clerk. His duties. SEC. 40. It shall be the duty of the county clerk to do, perform and transact all county business without any extra or greater compensation than is allowed by law; said clerk shall keep all the books required by this chapter to be kept, shall file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

Seal. SEC. 41. The board of county commissioners hereby established, shall procure and keep a seal, with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk.

What sufficient sealing. SEC. 42. The impression of the seal hereby required to be kept, by stamp, shall be a sufficient sealing in all cases where sealing is required.

Clerk to have power of notary public. SEC. 43. The county clerk shall have power and authority to take the acknowledgement of deeds and other instruments of writing.

County clerks to be *ex officio* registers of deeds. SEC. 44. The county clerks shall, *ex officio*, be registers of deeds in and for their respective counties, and the said county clerks shall keep the books, and record all instruments, now or hereafter required to be recorded by any law of this territory, in the same manner that the law requires the register of deeds to keep the same. And the said clerks shall receive the same compensation for recording deeds and other instruments of writing, as is now allowed county recorders, or such compensation as may by law be prescribed from time to time.

Compensation as such.

Records to be kept in fire-proof safe. SEC. 45. It shall be the duty of said county clerks to keep the records of their office in a fire-proof iron safe, to be kept for the purpose, and which shall be purchased by the county commissioners, when in their judgment the same shall be advisable.

CHAPTER X.

COUNTIES.

Section 1. All unorganized counties shall be attached to the nearest organized county directly east of them, for election, judicial and revenue purposes.

Unorganized, where attached.

CHAPTER XI.

COUNTY ORDERS.

Section 1. All county orders heretofore drawn, or that may hereafter be drawn by the proper authorities of any county, shall, after having been presented to the county treasurer of the respective counties, and by him endorsed "not paid for want of funds in the treasury," from said date shall draw interest at the rate of ten per cent. per annum.

County orders after presentation to draw interest.

CHAPTER XII.

COUNTY SEATS.

Section 1. Whenever any county shall organize in this territory, the qualified voters thereof are hereby empowered to select the place of their county seat by a vote at the first election held in the county for the choice of county officers; for this purpose, each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having the majority

County seats, how first located.

of all the votes polled, shall be the county seat, and public notice of said location shall be given within thirty days, by the tribunal transacting county business, by posting up notices in three several places in each precinct in the county.

How changed.

SEC. 2. Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the tribunal transacting county business, signed by two-thirds of the qualified voters of the county, it shall be the duty of said tribunal, in the notices for the next general election, to notify said voters to designate upon their ballots at said election, the place of their choice; and if, upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

If no place has a majority, another election to be held.

SEC. 3. If no one place has a majority of all the votes polled, as provided for in section one, it shall be the duty of the tribunal transacting county business, within one month after said election, to order a special election, and give ten days notice thereof, by posting up three notices in each precinct in the county, at which election votes shall be taken by ballot between the three highest places voted for at the first election. And if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two highest places voted for at the last election, and the place having the highest number of votes shall be the county seat.

Proceedings when located on public lands

SEC. 4. Whenever any county seat shall be located upon the public lands, it shall be the duty of the tribunal transacting county business to enter, or purchase, a quarter section of land at the place so designated, at the expense of, and for the use of the county within three months thereafter, if said land be subject to private entry; if not, such tribunal shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

Survey and plats.

SEC. 5. The aforesaid tribunal shall, within three months after the selection, cause the same to be surveyed into town lots, squares, streets and alleys, and platted and recorded in pursuance of law; and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

Public sale of lots by the sheriff.

SEC. 6. The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder, at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one-third cash, and the balance on time, as the county tribunal may deem best, and may dispose of lots at private sale, upon terms as above provided for.

Certificate to purchasers.

SEC. 7. Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warrantee deed from the county tribunal, when payment in full shall be made for the same. Any lots sold as above, that shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county, and shall be again sold as hereinafter provided.

Proceeds of sale, how applied.

SEC. 8. The proceeds of the sales of the aforesaid lots, after deducting the expenses of surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county seat, at the county seat, and shall be used for no other purpose whatever.

County buildings.

SEC. 9. In any county which may collect a building fund by the provisions of this chapter, it shall be the duty of the tribunal transacting county business, within one year from the time such fund becomes available, to advertise, by publishing in a newspaper at least three months, for bids for building a court house, jail and offices for register of deeds and county clerk, if the above specified fund, in their judgment, may be sufficient for that purpose. Said advertisement for bids to contain plans and specifications for such buildings, and also the time allowed to complete the same. The lowest responsible bid shall in all cases be accepted, and the contracts for such buildings shall be so conditioned, that not more than one-half the payment

Letting of work, etc.

for the same shall be made until the contract shall be completed to the satisfaction of the said tribunal.

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CHAPTER XIII.

COURTS.

SUPREME COURT.

Jurisdiction

SECTION 1. The supreme court of the territory shall have and exercise appellate and final jurisdiction of all matters of appeals, or writs of error, that may be taken from the judgments or decrees of the district courts, in all matters of law, facts and equity, where the rules of law or the principles of equity appear, from the files, exhibits or records from said courts, to have been erroneously determined.

Record.

SEC. 2. The court may prescribe the manner of keeping the records of the court by the clerk thereof, and the rules of practice before said court.

If no quorum, court to adjourn.

SEC. 3. If a quorum is not in attendance on the first day of the term, the fact shall be entered upon the records, and the court shall stand adjourned until the next day, and a like proceeding from day to day, until the fourth day; and should there still be no quorum, the court will stand adjourned until the next term in course. No proceedings shall in any manner be affected by such adjournment, or failure to hold a court, but shall stand continued to the next term.

Writs, etc.

SEC. 4. The court may issue all writs and processes necessary for the exercise and enforcement of its jurisdiction and powers.

Reporting decisions.

SEC. 5. The judges of the court may report their own decisions, or they may appoint a reporter, who shall hold his office at the pleasure of the court.

Opinion of court reduced to writing.

SEC. 6. The opinions of the chief, and each associate justice of the court, on all questions reviewed on appeal, as well as such motions, collateral questions, and points of practice, as they may think of sufficient importance, shall be reduced to writing, and filed with the clerk of the court; all dissenting opinions must be written and filed in the same manner.

Sec. 7. The supreme court has a general supervision over the district courts, to prevent and correct errors and abuses. Supervision.

Sec. 8. The supreme court shall be held annually at the seat of government of the territory, on the second Tuesday of December and the second Tuesday of June. Time of holding supreme court.

Sec. 9. The judges of the supreme court of this territory, or a majority of them, are hereby authorized to appoint and hold a special term of said court, at such time as they may designate, for disposing of the unfinished business of any general term of said court, and may appoint one special term of said court in any one year for general or special purposes; and shall cause notices thereof, and of the purposes for which it shall be holden, to be published in one newspaper at the city of Omaha, and in one newspaper at Nebraska city, at least one month previous to the first day of said term. Judges of the supreme court may appoint special term. Notice to be published.

Sec. 10. It shall be the duty of the reporter to publish the decisions of said court, together with a statement of the cases and notes thereof. Reporter to publish decisions.

Sec. 11. The reporter shall have and enjoy such copyright to the decisions so published by him as he may obtain therefor. He shall have the copyright.

DISTRICT COURTS.

Sec. 12. The district court shall be held at the court house, at the county seat, in each of the counties hereinafter named. When there shall be none, the sheriff of the county shall provide, at the expense of the county, a suitable place at the county seat for holding the court. Court to be held at county seat.

Sec. 13. The district court shall have original and exclusive jurisdiction over all matters and suits at law and in chancery, arising in each county in their respective districts, except when justices of the peace have jurisdiction, and concurrent jurisdiction with said justices of the peace, in cases where the demand or cause of action of the plaintiff Jurisdiction shall exceed fifty dollars, and not exceeding one hundred dollars, and shall have jurisdiction in all cases of appeal from a justice of the peace or judge of probate, and the said judges of the district courts shall be conservators of the peace throughout the territory.

SEC. 14. The said courts shall respectively have authority to hear and determine all cases of crimes and misdemeanors whatsoever, that may be committed in their respective districts, except those which are exclusively cognizable before justices of the peace.

Special term.

SEC. 15. A special term may be ordered and held by the district judge in any county in his district, for the trial of any criminal offense, if he deem it necessary. In ordering a special term, he shall direct whether a grand or petit jury, or both, shall be summoned.

May interchange.

SEC. 16. The district judges may interchange, and hold each other's courts.

Court record.

SEC. 17. The clerk of each district court shall keep a record of the proceedings of the court, under the direction of the judge. He shall, from time, to time, read over all entries therein in open court, which, when correct, shall be signed by the judge.

Records read and approved at next succeeding term.

SEC. 18. When it is not practicable to have all the records prepared, and thus approved, during the term, they may be read, corrected and approved, at the next succeeding term, but such delay shall not prevent an execution from issuing in the meantime, and all other proceedings may take place in the same manner as though the record had been approved and signed. Entries authorized to be made in vacation, shall be read, approved and signed at the next term of the court.

Record under control of court.

SEC. 19. The record aforesaid is under the control of the court, and may be amended, or any entry therein expunged, at any time during the term at which it is made, or before it is signed by the judge, as aforesaid.

Entries altered only to correct mistakes.

SEC. 20. Entries made, approved and signed at a previous time, can be altered only to correct an evident mistake or omission.

Absence of judge, and adjournment.

SEC. 21. If the judge does not appear on the day appointed for holding the court, the clerk shall make an entry thereof in his record, and adjourn the court till the next day, and so on until the third day, unless the judge appear.

SEC. 22. If the judge does not appear by five o'clock in the afternoon of the third day, the court shall stand adjourned till the next regular term.

SEC. 23. If the judge is sick, or for any other sufficient cause is unable to attend court, at the regularly appointed time, he may, by a written order, direct an adjournment to a particular day therein specified, and the clerk shall, on the first day of the term, or as soon thereafter as he receives the order, adjourn the court, as therein directed.

Judge may, by written order, adjourn court, when.

SEC. 24. No recognizance, or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term, but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in the last preceding section.

Failure of term not to affect recognizance, etc.

SEC. 25. In cases of such continuances, or adjournments, persons recognized or bound to appear at the regular term, which has failed as aforesaid, shall be held bound, in like manner, to appear at the time so fixed, and their sureties (if any) shall be liable in case of their non-appearance, in the same manner as though the term had been held at the regular time, and they had failed to make their appearance thereat.

Persons recognized bound to appear, and sureties liable.

SEC. 26. Upon any final adjournment of the court, all business, not otherwise disposed of, will stand continued generally.

SEC. 27. No judge of the supreme or district court shall practice as an attorney or counselor at law, or give advice in relation to any case pending, or about to be brought, in any of the courts of this territory.

Judge cannot practice.

SEC. 28. All judicial proceedings must be public, unless otherwise specially provided by statute, or otherwise agreed upon by the parties.

Proceedings to be public.

SEC. 29. All courts have power to administer oaths connected with any matter pending before them, either by any judge, justice or clerk thereof, or by any other person appointed for that purpose by them.

Who to administer oaths.

SEC. 30. A judge or justice is disqualified from acting

Cases in which

judge is disqualified. as such, except by mutual consent of parties, in any case wherein he is a party, or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding.

SEC. 31. The district court may, by rule, compel a justice of the peace to allow an appeal, or to make or amend his returns, according to law.

Omissions, how corrected. SEC. 32. When an omission or mistake has been made by a justice in his docket entries, and that fact is made to appear, to the satisfaction of the court, the court may correct the mistake, or supply the omission, or direct the justice to do so.

Appeals. SEC. 33. An appeal from an inferior, if to the district court, brings up a cause for trial upon its merits alone.

Judgment. SEC. 34. When judgment is affirmed, the district court shall, on motion, render judgment against the appellant and his sureties, for the amount of the judgment below, damages and costs, in case such damages can be ascertained by the court without trial.

No business on Sunday, except for certain purposes. SEC. 35. No court can be opened, nor can any judicial business be transacted, on Sunday, except—

First. To give instructions to a jury then deliberating on their verdict.

Second. To receive a verdict, or discharge a jury.

Third. To exercise the powers of a single magistrate in a criminal proceeding.

Clerks may appoint deputies. SEC. 36. The clerks of the supreme court, and of the several district courts in this territory, shall have power to appoint deputies; and district clerks shall appoint deputies who shall reside in each county wherein courts are to be held. Such deputies shall be sworn faithfully to perform the duties of their office, before they enter upon those duties.

Clerk liable for acts of deputy. SEC. 37. Every clerk appointing a deputy under the provisions of this chapter, shall be liable for all the official acts of said deputy clerk.

Bond. SEC. 38. Each clerk aforesaid shall, before he enters upon the duties of his office, enter into bond to the territory, with good security, to be approved by the judge in whose district such clerk resides, in the sum of three thousand dollars, conditioned for the faithful performance of the duties of his office.

Bond and liability.

SEC. 39. Each clerk hereafter to be appointed shall, before he enters upon the duties of his office, give a like bond to the territory; and any person aggrieved by the malpractice of any such clerk, may sustain an action thereon before any court of competent jurisdiction.

JUDICIAL DISTRICTS.

First district defined.

SEC. 40. The counties of Douglas, Sarpy and Dodge, and the counties or territory west thereof, shall be and constitute the first judicial district.

Second district defined.

SEC. 41. The counties of Otoe, Nemaha, Richardson, Pawnee, Johnson and Cass, and the counties and territory west thereof, shall be and constitute the second judicial district.

Third district defined.

SEC. 42. The counties of Washington, Burt and Dakota, and the counties and territory west and north thereof, (except what is embraced in the first judicial district,) shall be and constitute the third judicial district.

TIMES OF HOLDING COURTS.

Times of holding court in first district

SEC. 43. The times of holding the regular terms of the district courts of the first judicial district, shall be as follows: In the county of Sarpy on the fourth Monday of March, and on the second Tuesday of November, in each year; in the county of Dodge on the first Tuesday of April, and on the third Tuesday of September, in each year; in the county of Douglas on the third Tuesday of April, and on the third Tuesday of October, in each year.

Processes returnable to terms herein appointed.

SEC. 44. All writs, processes, matters and proceedings whatsoever returnable to the next term of said several courts, as heretofore fixed, shall be deemed and held returnable at the terms respectively herein appointed to be held, and the same shall, for all purposes whatsoever, be deemed and held to be the same terms, respectively, as herein provided for in each of the aforesaid counties.

When held in Platte county.

SEC. 45. The judge of the first judicial district of the territory shall hold a term of the district court in the town of Columbus, within and for the county of Platte, on the second Tuesday of May, annually: *Provided*, That if the judge of said district may deem it necessary, he may order two terms in each year to be held in said county of Platte.

Counties west, attached to Platte.

SEC. 46. The counties west of said county of Platte shall be attached thereto for judicial purposes, until otherwise provided.

Times of holding court in second district.

SEC. 47. The times of holding the terms of the district courts of the second judicial district, shall be, in the county of Otoe on the fourth Monday in March; in the county of Richardson on the first Thursday thereafter, and in the county of Nemaha on the second Monday thereafter; in the county of Cass on the third Tuesday in April, and on the first Tuesday in October; in the county of Otoe on the fourth Monday in June; in the county of Johnson on the first Monday in September; in the county of Gage on the first Thursday thereafter; in the county of Pawnee on the first Monday thereafter; in the county of Richardson on the first Thursday thereafter; in the county of Nemaha on the second Monday thereafter; and in the county of Otoe on the third Tuesday in October.

Processes returnable.

SEC. 48. All writs, processes, matters, and proceedings whatsoever, returnable at the next terms of any of said courts, where service of process has been made as directed by law, either personally or by publication, under any law now in force, shall, for any purpose, be deemed and held to be returnable at the terms herein appointed.

Terms in Pawnee, Johnson and Gage.

SEC. 49. There shall be held in the counties of Pawnee, Johnson and Gage but one term of the district court annually.

Times of holding district court in third district.

SEC. 50. The terms of the district court of the several counties within the third judicial district shall hereafter be held in each year at the times following, viz.: In Burt county on the first Wednesday of April, and on the last Wednesday before the first Monday of October; in Dixon county, and the counties attached by law to Dixon county for judicial purposes, a term shall be held on the Monday next after the first Wednesday of April, in each odd numbered year, and in Cedar county on the Monday next after the first Wednesday of April, in each even numbered year; in Dakota county on the second Wednesday of April, and on the first Monday of October; in Washington county on the first Monday of June, and on the second Monday in December, of each year.

Special term may be held once a year.

SEC. 51. The judge of said district may appoint one special term in any year in either of said counties, if, in his judgment, it shall be necessary.

SEC. 52. L'Eau qui Court county is attached to Cedar county for judicial purposes.

POWERS OF JUDGES.

When a judge is sick, absent or disqualified, another judge may act.

SEC. 53. Whenever a vacancy shall occur in the office of district judge, in any district of this territory, or whenever it shall appear by affidavit, to the satisfaction of any district judge in the territory, that the judge of any other district is unable to act, on account of sickness, interest or absence from the district, or from any other cause, the judge to whom application may be made, shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do; and the order or act shall have the same effect as if made or done by the judge of such district.

DISTRICT COURTS REQUIRED TO REDUCE INSTRUCTIONS TO WRITING WHEN REQUESTED.*

Judge required to reduce instructions to writing.

SEC. 54. In all cases, whether civil or criminal, which shall be tried before a jury, the presiding judge shall, on the application of either party to the case on trial, before the jury retire to consider of their verdict, reduce to writing the charge of the court upon any point of law involved in the case, and such charge shall remain on file among the papers in the cause.

Statement to be entered on journal.

SEC. 55. In all cases in which such application shall be made, the presiding judge shall, at the request of the party making the same, cause a statement that such application had been made to be entered on the journal of the court, and such charge shall be fully reduced to writing and filed, before the jury shall retire to consider of their verdict.

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* Act approved February 12, 1866.

CHAPTER XIV.

DECEDENTS.

ESTATE IN DOWER.

Dower.

SECTION 1. The widow of every deceased person shall be entitled to dower, or the use, during her natural life, of one-third part of all the lands whereof her husband was seized, of all estate of inheritance at any time during the marriage, unless she is lawfully barred thereof.

In what estates widow entitled to dower.

SEC. 2. If a husband, seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a dower of both, but shall have her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by commencement of proceedings to recover her dower of the lands given in exchange, within one year of the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Same.

SEC. 3. When a person seized of any estate of inheritance, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

Same.

SEC. 4. Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

Same.

SEC. 5. When, in either of the cases mentioned in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life, as dower.

Same.

SEC. 6. If, in either of the cases above specified, the heir or other person, claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in mortgaged lands, the value of one-third of the residue after such deduction.

How lands aliened by husband shall be estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower, according to their value at the time when they were so aliened.

When lands lie in several counties.

SEC. 8. When a widow is entitled to dower in the lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon the application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons, in such manner as the judge of probate shall direct. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Warrant issued to commissioner to set off dower.

Duties of commissioners.

SEC. 9. The commissioners shall be sworn before a judge or justice of the peace, to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half of the costs of such proceedings shall be paid by the widow, and one-half by the adverse party.

Proceedings where an estate cannot be divided.

SEC. 10. When the estate out of which dower is to be assigned, consists of a mill or other tenements, which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits to be had and received by the widow as a tenant in common with the owners of the estate.

Widow may occupy if heirs do not object, without having dower assigned.

SEC. 11. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same, with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

How right of dower may be barred.

SEC. 12. A married woman residing within this territory, may bar her right of dower in any estate conveyed by her husband, or by his guardian if he be a minor, by joining in a deed of conveyance, and acknowledging the same as prescribed by law, or by joining with her husband in a subsequent deed acknowledged in like manner.

How dower may be barred by jointure.

SEC. 13. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her, with her assent, before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect, in possession or profit, immediately on the death of the husband.

How assent to be expressed.

SEC. 14. Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

Provision in lieu of dower.

SEC. 15. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Wife to elect whether to take dower or jointure, when.

SEC. 16. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election before the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband; but she shall not be entitled to both.

SEC. 17. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election, whether she will take the lands so devised or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

Wife to elect between dower and provision made in husband's will.

SEC. 18. When a widow shall be entitled to an election under either of the two preceding sections, she shall be deemed to have elected to take such jointure, devise or other provision, unless, within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

When deemed to have elected to take jointure.

SEC. 19. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will, or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure or other provision had not been made.

In case of eviction, to be endowed anew.

SEC. 20. A woman being an alien shall not, on that account, be barred of her dower; and any woman residing out of the territory shall be entitled to dower of the lands of her deceased husband, lying in this territory, of which her husband died seized; and the same may be assigned to her or recovered by her, in like manner as if she and her deceased husband had been residents within the territory at the time of his death.

Aliens and non-residents entitled to dower.

SEC. 21. No woman who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances, in good repair, and shall be liable to the person having the next immediate inheritance therein, for all damages occasioned by any waste committed or suffered by her.

Women endowed of lands, liable for waste.

SEC. 22. A widow may remain in the dwelling house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate, for one year.

Widow entitled to dwelling house and sustenance one year.

Damages for withholding dower.

SEC. 23. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

Measure of damages.

SEC. 24. Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated, in a suit against the heirs of her husband, from the time of his death, and in suits against other persons, from the time of her demanding her dower of such persons.

Not for permanent improvements.

SEC. 25. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.

Damages when land is alienated by heir of husband.

SEC. 26. When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages from such grantee shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Acceptance of assignment of dower a bar to further claim.

SEC. 27. When the widow shall have accepted an assignment of dower in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

Dower recovered by default or collusion not to prejudice heirs.

SEC. 28. When a widow, not having right to dower, shall, during the infancy of the heirs of her husband, or any of them, or of any person entitled to the lands, recover dower, by the default or collusion of the guardian of such infant heir or other person, such heir or other person, so entitled, shall not be prejudiced thereby; but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

ESTATES BY THE CURTESY.

SEC. 29. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by curtesy: *Provided*, That if the wife, at her death, shall have issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

TITLE TO REAL PROPERTY BY DESCENT.

Manner in which real estate not devised shall descend.

SEC. 30. When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in the manner following:

First. In equal shares to his children, and to the lawful issue of any deceased child, by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally: otherwise, they shall take according to the right of representation.

Second. If he shall have no issue, his estate shall descend to his widow during her natural lifetime, and, after her decease, to his father; and if he shall have no issue nor widow, his estate shall descend to his father.

Third. If he shall have no issue, nor widow, nor father, his estate shall descend, in equal shares, to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: *Provided*, That if he shall have a mother also, she shall take an equal share with his brothers and sisters.

Fourth. If the intestate shall leave no issue, nor widow, nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of the deceased brother and sister.

Fifth. If the intestate shall leave no issue, nor widow, and no father, mother, brother, nor sister, his estate shall descend to his next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: *Provided, however,*

Sixth. If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child, by inheritance from such deceased parent, shall descend, in equal shares, to the other children of the same parent, and to the issue of any such other children, who shall have died, by right of representation.

Seventh. If, at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child, by inheritance from his said parent, shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally: otherwise, they shall take according to the right of representation.

Eighth. If the intestate shall leave a widow, and no kindred, his estate shall descend to such widow.

Ninth. If the intestate shall have no widow, nor kindred, his estate shall escheat to the people of this territory.

When illegitimate child shall be considered an heir.

SEC. 31. Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as an heir of his mother, and shall inherit his or her estate in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him, as aforesaid, or adopted him into his family, in which case such child and all legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the other shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estate of all the said children, as provided hereinbefore, in like manner as if all had been legitimate.

How estate of illegitimate child shall descend.

SEC. 32. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

How degrees of kindred computed.

SEC. 33. The degrees of kindred shall be computed according to the rule of the civil law; and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

Property given in lifetime, how considered in distribution of estate.

SEC. 34. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

Same.

SEC. 35. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Same.

SEC. 36. If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it be in personal estate, it shall be considered a part of the personal estate; and if in either case it shall exceed the share of real and personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

Same.

SEC. 37. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Same.

SEC. 38. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

Same.

SEC. 39. If any child or lineal descendant so advanced shall die before the intestate, bearing issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

How title of tenant by curtesy and in dower to be considered.

SEC. 40. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of any estate by deed or will.

When inheritance by right of representation takes place. Posthumous children.

SEC. 41. Inheritance or succession by right of representation, takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

When and for what purpose real

SEC. 42. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, or the children of such insane person or spendthrift, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein as provided in this chapter. estate under guardianship may be sold.

SEC. 43. When it shall satisfactorily appear to the court, upon the petition of any such guardian, that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof put out at interest or invested in some productive stock, his guardian may sell the same for that purpose, upon obtaining a license therefor, and proceeding therein as hereinafter provided. Same.

SEC. 44. If the estate is sold for the purpose mentioned in the forty-second section of this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward. Same.

SEC. 45. If the estate is sold for the purpose of putting out or investing the proceeds as provided in the forty-third section of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court. Same.

SEC. 46. In every case of the sale of real estate, as provided in this subdivision, the residue of the proceeds, if any, remaining upon the final settlement of the account of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons and in the same proportions as the real estate would have been if it had not been sold. Same.

SEC. 47. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and How license for such sale to be obtained.

the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, which petition shall be verified by the oath of the petitioner.

Order to appear, what to contain.

SEC. 48. If it shall appear to the court from such petition, that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Upon whom and how served.

SEC. 49. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county as the court shall specify in such order.

When county commissioners to certify approbation of sale.

SEC. 50. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county in which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

Proceedings before the probate judge.

SEC. 51. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of due service of the order, and upon filing the certificate of approbation of the commissioners of the county when necessary, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons interested in the estate, who shall think proper to oppose the application.

Same.

SEC. 52. On such hearing, the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner and with the like effect as in other cases.

Same.

SEC. 53. If, after a full examination, it shall appear to the court either that it is necessary or that it would be for the benefit of the ward that the real estate, or any part of it, should be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

SEC. 54. Every guardian licensed to sell real estate, as aforesaid, shall, before the sale, give bond to the judge of probate, with sufficient surety or sureties, to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law. Guardian shall give bond

SEC. 55. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance like that required in the succeeding subdivision to be taken by an executor, administrator or guardian, when licensed to sell real estate pursuant to the provisions of that subdivision. And take oath.

SEC. 56. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian, and the evidence of the giving of such notice may be perpetuated in like manner and with the same effect as is provided in case of sale of real estate by guardians. Notice of sale, and proceedings therein.

SEC. 57. The license granted in pursuance of this subdivision shall be in force no more than one year after granting the same. License in force one year.

SEC. 58. When any minor, insane person, or spendthrift, residing without this territory, shall be put under guardianship in the territory or country in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court in any county in which there may be any real estate of the ward. When foreign guardian may file copy of his appointment.

SEC. 59. After filing such authenticated copy of his appointment, such foreign guardian may be licensed by the probate court of the same county, to sell the real estate of the ward in this territory, in the same manner and upon the same terms and conditions as are prescribed in this When foreign guardian may be licensed to sell real estate.

subdivision in the case of a guardian appointed in this territory, excepting in the particulars hereinafter mentioned.

Proceedings by foreign guardian.

SEC. 60. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this territory, and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

Proceeds of sale considered as real estate of the ward.

SEC. 61. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been according to the laws of this territory, if it had not been sold; and such foreign guardians shall, in every case before making the sale, give bond, with satisfactory surety or sureties, to the judge of probate, with conditions to account for and dispose of the same accordingly.

When granting of license objected to, court may award costs to prevailing party.

SEC. 62. If any person shall appear and object to the granting of any license prayed for under the provisions of this subdivision, and it shall appear to the court that either the petition or the objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

When action to recover estate sold by guardian to be commenced.

SEC. 63. No action for the recovery of any estate sold by a guardian, under the provisions of this subdivision, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the territory, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the territory.

Proceedings in contest of sale.

When irregularities shall not render sale invalid.

SEC. 64. In case of an action relating to any estate sold by a guardian, under the provisions of this subdivision, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear —

First. That the guardian was licensed to make the sale by a probate court of competent jurisdiction.

Second. That he gave a bond which was approved by the judge of probate, in case any bond was required by the court upon granting the license.

Third. That he took the oath prescribed in this subdivision.

Fourth. That he gave notice of the time and place of sale, as prescribed by law.

Fifth. That the premises were sold accordingly at public auction, and are held by one who purchased in good faith.

When aggrieved party may recover damages.

SEC. 65. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise, as the case may require.

Other cases where irregularity not to render sale void.

SEC. 66. If the validity of any sale made by a guardian under the provisions of this subdivision, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to make the sale by the proper probate court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

SALE OF LANDS FOR THE PAYMENT OF DEBTS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

When executors or administrators may sell real estate to pay debts.

SEC. 67. When the personal estate of any deceased person, in the hands of his executors or administrators, shall be insufficient to pay all his debts, with the charges of administering his estate, such executors or administrators may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Proceedings to obtain such license.

SEC. 68. In order to obtain such license, the executor or administrator shall present a petition to the probate court from which he received his appointment, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, so far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized; and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

Judge of probate to make order to show cause why license should not be granted.

SEC. 69. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of probate shall thereupon make an order, directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks and not more than ten weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

How and on whom such order served.

SEC. 70. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition, or shall be published at least four successive weeks, in such newspaper as the court shall order: *Provided, however*, If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

Proceedings before judge.

SEC. 72. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all the persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

SEC. 73. The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate in the same manner and with the like effect as in other cases. Same.

SEC. 74. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned. Same.

SEC. 75. When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give bond to the judge of probate, with sufficient sureties, to account for all the proceeds of the sale that shall remain after the payment of the debts and charges, and to dispose of the same according to law; and in all cases where license is granted for the sale of real estate, the judge of probate may require a further bond from the executor or administrator, when he shall deem it necessary. Executor, etc., to give bond.

SEC. 76. The proceeds of any real estate sold for the payment of debts, and charges of administration, as provided in this subdivision, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased, and the executor and administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor. Proceeds of sale to be deemed assets.

SEC. 77. No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts, and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall When license shall not be granted.

be insufficient therefor, within such time as the judge of probate shall direct.

Bond, for whose benefit.

SEC. 78. The bond mentioned in the preceding section shall be for the security, and may be prosecuted for the benefit, of the creditors, as well as the executor or administrator.

When judge shall make order for sale of real estate.

SEC. 79. If the judge of probate shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much and such part of the real estate described in the petition as he shall judge necessary or beneficial.

What order shall specify.

SEC. 80. The order shall specify the lands to be sold, and the judge of probate may therein direct the order in which several tracts, lots or parcels shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs to be sold before that so devised; and if it appear that any lands devised or descended have been sold by the heirs or devises, then the lands in their hands remaining unsold shall be ordered to be first sold.

Copy of order to be delivered to executor.

Authority conferred by it.

SEC. 81. Upon the making of such order, and the filing with the judge of probate of such bond as is required by the provisions of this subdivision, a certified copy of the order of sale shall be delivered by the judge of probate to the executor or administrator, who shall thereupon be authorized to sell the real estate, as therein directed, within one year after the making of the order, but not after that period.

To what license may extend.

SEC. 82. License to sell real estate, as provided in this subdivision, may extend to the reversion of the dower of the widow of a deceased person; and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

SEC. 83. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

Notice of sale. How given.

SEC. 84. Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine o'clock in the morning and the setting of the sun the same day, and said sale shall be held open for one hour within said specified time, which hour shall be stated in the notice of sale provided for in the preceding section.

Sale.

SEC. 85. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase, of any part of the real estate so sold; and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

Who shall not purchase.

SEC. 86. On such sale, the executor or administrator may give such length of credit, not exceeding three years, and for not more than three-fourths of the purchase-money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of probate, and shall secure the moneys for which credit is given, by a bond of the purchaser and by a mortgage of the premises sold.

Credit may be given. How payment secured.

SEC. 87. The executor or administrator making any sale, shall immediately make a return of his proceedings upon the order of sale in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor or administrator, or any other person, on oath, touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent., exclusive of the expenses of a new sale, may be

Return of executor, etc., and proceedings of judge thereon. May vacate sale.

obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given; and the sale shall be in all respects as if no previous sale had taken place.

When sale to be confirmed.

SEC. 88. If it shall appear to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum than above specified cannot be obtained, he shall make an order confirming such sale, and directing conveyances to be executed.

Oath of executor.

SEC. 89. Every executor or administrator authorized to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an oath before the judge of probate, or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested, which oath shall be filed with the judge of probate before the confirmation of the sale.

Affidavit of executor, evidence of time, place and manner of notice.

SEC. 90. An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this subdivision, being made before the judge of probate, or some officer authorized to administer oaths, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

Sale may be adjourned.

SEC. 91. If, at the time appointed for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding, in all, three months.

Notice of adjournment.

SEC. 92. In case of such adjournment, notice thereof shall be given, by a public declaration at the time and place first appointed for the sale, and if the adjournment shall be more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

License to sell real estate to pay legacies.

SEC. 93. When a testator shall have given any legacy by will, that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a sale for the payment of debts.

Interest in contract for purchase of land may be sold.

SEC. 94. If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land and under such contract may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this subdivision in respect to lands of which he died seized, except as hereinafter provided.

Such sale to be made subject to payments thereafter to become due.

Purchaser to execute a bond.

SEC. 95. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate until the purchaser shall execute a bond to the executor or administrator for the benefit and indemnity of the person entitled to the interest of the deceased in the land so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate shall approve.

Condition of bond.

SEC. 96. Such bond shall be conditioned that such purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment of contract to purchaser

SEC. 97. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, interest and title of the person entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

How proceeds of such sale to be disposed of.

SEC. 98. The proceeds of every such sale of the interest of the deceased person in lands under contract, as hereinbefore mentioned, shall be disposed of, in all respects, in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this subdivision.

All sales and conveyances subject to charges existing at the death of testator or intestate.

SEC. 99. All sales and conveyances of land made by executors or administrators, pursuant to the provisions of this subdivision, shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge of probate until the purchaser shall execute a bond to the executor or administrator, as required in this subdivision in the case of the sale of a contract for the purchase of lands on which payments are to become due.

When and where foreign executor, etc., may file copy of his appointment.

SEC. 100. When an executor or administrator shall be appointed in any state or other territory, or in any foreign country, on the estate of any person dying out of this territory, and no executor or administrator thereon shall be appointed in this territory, the foreign executor or administrator may file an authenticated copy of his appointment, in the probate court in any county in which there may be any real estate of the deceased.

Thereupon may be licensed to sell real estate.

SEC. 101. Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same probate court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this territory, excepting in the particulars in which a different provision is hereinafter made.

When no further bond shall be required.

SEC. 102. When it shall appear to the court granting the license, that such foreign executor or administrator is bound by sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale for the payment of debts or legacies and charges of administration, and a copy of such bond, duly authenticated, shall be filed in such probate court, no further bond for that purpose shall be required of him by the court.

When foreign executor, etc., to give bond.

SEC. 103. If an authenticated copy of such bond shall not be filed, as mentioned in the preceding section, such foreign executor or administrator, before making such sale, shall give bond, with sufficient sureties, to the judge of probate, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

Same.

SEC. 104. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this subdivision, he shall, before making the sale, give bond with sufficient sureties to the judge of probate, with condition to account to him for all proceeds of the sale that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

When guardian may be licensed to sell real estate of his ward.

SEC. 105. When the goods, chattels, rights and credits in the hands of the guardian of any minor, or of any idiot or insane person, or any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be licensed by the probate court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a sale by executor or administrator, except as in the particular in which a different provision is hereinafter made.

Same.

SEC. 106. If it shall be represented to the court, that it is necessary to sell some part of the real estate of the ward, and by such partial sale the residue of the real estate, or some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as the court shall judge necessary, and most for the interest of all concerned.

Guardian to give bond.

SEC. 107. The guardian shall give bond to the judge of probate, to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this subdivision in the case of a like sale by an executor or administrator.

When approbation of county commissioners necessary.

SEC. 108. No license shall be granted to any guardian to sell real estate of his ward, as provided in this subdivision, in any case excepting that of minors, unless the commissioners of the county of which the ward is an inhabitant, or in which he resides, shall certify to the judge of probate in writing their approbation of such proposed sale, and that they deem it necessary.

Who considered interested in the estate

SEC. 109. All those who are next of kin and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear and answer to the petition of the guardian, and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested according to the provisions respecting similar sales by executors and administrators, contained in this subdivision.

When and where foreign guardian may file copy of appointment

SEC. 110. When any minor, insane person or spendthrift, residing out of this territory, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the ward.

May be licensed to sell real estate of ward.

SEC. 111. After filing an authenticated copy of his appointment, such foreign guardian may be licensed to sell the real estate for the payment of the debts of the ward, and the charges of managing his estate, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a guardian appointed in this territory, excepting in the particulars wherein a different provision is hereinafter made.

When further bond shall not be required.

SEC. 112. When it shall appear to the judge of probate that the foreign guardian is bound, with sufficient surety or sureties in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here; otherwise, he shall give bond in like manner as is prescribed in this subdivision, in the case of sales by foreign executors or administrators.

When bond to be given.

SEC. 113. When such foreign guardian is authorized to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties to the judge of probate, with condition to account, before such judge, for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

Proceeds of sale considered as real estate.

SEC. 114. In all cases of sale by an executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any probate court, by virtue of the provisions of this subdivision, whether such executor or administrator or guardian was appointed in this territory or elsewhere, the surplus of the proceeds of the sale remaining on the final settlement of the accounts, shall be considered as real estate and disposed of among the persons and in the same proportion as the real estate would have been by the laws of this territory, if it had not been sold.

Oath of guardian.

SEC. 115. Every guardian, whether appointed in this territory or elsewhere, when licensed to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an oath like that required in the same case of an executor or administrator; and notice shall be given and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator; and the evidence of giving such notice may be perpetuated in the same manner.

Notice.

When and to whom court may award costs.

SEC. 116. If any person shall appear and object to the granting of any license prayed for under the provisions of this subdivision, by the executor, administrator or guardian, and if it shall appear to the court that either the petition or objection thereto is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof.

Limitation of time for bringing action to recover estate sold by executo, r etc., or guardian.

SEC. 117. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this subdivision, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale, and no action for any estate sold in like manner by a guardian, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

To whom preceding section shall not apply.

SEC. 118. The preceding section shall not apply to persons out of this territory, nor to minors or others under any legal disability to sell at the time the right of action shall first accrue; but all such persons may commence such action at any time within five years after the removal of the disability, or their return to this territory.

Irregularity in proceedings relating to any estate sold by executor, etc.

SEC. 119. In the case of any action relating to any estate sold by an executor, administrator or guardian, in which an heir, or person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear—

First. That the executor, administrator or guardian was licensed to make the sale by the probate court having jurisdiction.

Second. That he gave a bond, which was approved by the judge of probate, in case a bond was required upon granting a license.

Third. That he took the oath prescribed in this subdivision.

Fourth. That he gave notice of the time and place of the sale, as in this subdivision prescribed; and,

Fifth. That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Aggrieved party may recover damages, when.

SEC. 120. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the probate bond, or otherwise, as the case may require.

SEC. 121. If the validity of a sale made by an executor, administrator or guardian shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the executor, administrator or guardian was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Other cases where irregularity not to render sale void.

SEC. 122. Any executor, administrator or guardian who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of this subdivision, shall be liable in double the value of the land sold, as damages, to be recovered in a civil action by the person having an estate of inheritance therein.

Liability of executor, etc., who shall fraudulently sell real estate of testator, intestate, or ward.

WILLS OF REAL AND PERSONAL ESTATE.

SEC. 123. Every person of full age and sound mind, being seized in his own right of any lands, or any right thereto, or entitled to any interest therein descendable to his heirs, may devise and dispose of the same by his last will and testament, in writing; and all such estate not disposed of by will shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament, in writing, and may alter or revoke the same in like manner that a person under no disability may do the same: *Provided*, That no such will, alteration or revocation shall be of any validity without the consent of the husband of such married woman, in writing, annexed to such will, alteration or revocation, and attested and subscribed, and to be proven and recorded in like manner as a last will and testament is required to be witnessed, proven and recorded.

Who may devise, and what may be devised.

As to estate not devised.

Married woman may make, alter or revoke will.

Proviso, as to husband's assent to will of wife.

SEC. 124. Every devise of land in any will hereafter made, shall be construed to convey all the estate of the de-

How devise of land to be construed.

visor therein, which he could lawfully devise, unless it shall clearly appear, by the will, that the devisor intended to convey a less estate.

As to estate, etc., acquired after making will.

SEC. 125. Any estate, right or interest acquired by the testator, after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Who may dispose of personal estate by will.

SEC. 126. Every person of full age and sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto and interest therein, and all such estate not disposed of by the will, shall be administered as intestate estate.

Requisites to make will, not nuncupative, effectual.

SEC. 127. No will made within this territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

When nuncupative will shall not be good.

SEC. 128. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses, at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor, unless such nuncupative will was made at the time of the last sickness of the deceased, and in the place of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

SEC. 129. After six months shall have passed after speaking any testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken, nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days, at least, after the decease of the testator be fully expired; nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any marine, being on shipboard, from disposing of his wages, and other personal estate, by nuncupative will.

When no testimony shall be received to prove nuncupative will.

Other requisites to allowance of nuncupative will.

Exception as to soldiers and marines.

SEC. 130. All beneficial devises, legacies and gifts whatsoever, made or given in any will, to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a new charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

Effect of subscribing witness being devisee or legatee.

SEC. 131. But if such witness, to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

When bequest may be saved to subscribing witness.

SEC. 132. No will, nor any part thereof, shall be revoked, unless by burning, tearing, canceling or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence and by his direc-

How will to be revoked.

tion; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing signed, attested and subscribed in the manner provided in this chapter, for the execution of a will; excepting only, that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Will may be deposited with probate judge.

SEC. 133. Any will, in writing, being enclosed in a sealed wrapper, and having indorsed thereon the name of the testator and his place of residence, and the day when and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

To whom delivered during lifetime of testator.

When and by whom opened, and by whom retained.

SEC. 134. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after the notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Probate judge to give notice of will being in his possession.

SEC. 135. The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the same, to be presented for probate in such court.

Course to be pursued by person other than probate judge having will in custody.

SEC. 136. Every person other than the judge of probate, having the custody of any will, shall, within thirty days after he has a knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Duty of executor to present will, and signify acceptance of trust, or refusal.

SEC. 137. Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has a knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Neglect to perform duties declared a misdemeanor.

SEC. 138. Every person who shall neglect to perform any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

Punishment of person neglecting to deliver will.

SEC. 139. If any person having the custody of any will after the death of the testator, shall, without reasonable cause, neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

Probate court to appoint time and place for proving will.

SEC. 140. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court in such newspaper printed in this territory as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice shall be given as herein provided.

Notice thereof.

When court may grant probate on testimony of one subscribing witness.

SEC. 141. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof on the testimony of one of the subscribing witnesses only, if such a witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

Proceedings when none of subscribing witnesses reside in the territory.

SEC. 142. If none of the subscribing witnesses shall reside in this territory at the time appointed for proving the will, the court may, in its discretion, admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will, and, as evidence of the execution of the will, may admit proof of the handwriting of the testator and of the subscribing witnesses.

No will effectual unless proved and allowed.

SEC. 143. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, as provided in this chapter, or on appeal in the district court; and the probate of the will of real or personal estate as above mentioned, shall be conclusive as to its due execution.

Will proved in United States or foreign countries may be filed.

SEC. 144. All wills which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed and recorded, in the probate court of any county in which the testator shall have real and personal estate on which such will may operate, in the manner mentioned in the following sections.

Proceedings of court thereon.

SEC. 145. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

Same.

SEC. 146. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Same.

SEC. 147. When any will shall be allowed as mentioned in the preceding section, the probate court shall grant letters testamentary or letters of administration with the will annexed, and such letters testamentary or letters of administration shall extend to all the estate of the testator in this territory; and such estate, after payment of his just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estates in this territory, belonging to persons who are inhabitants of any other territory, state or country.

Provision in regard to child born

SEC. 148. When any child shall be born after the making of his parent's will, and no provision shall be made therein for him, such child shall have the same share in the estate of the testator as if he had died intestate, and the share of such child shall be assigned to him as provided by law in cases of intestate estate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

after making parent's will.

SEC. 149. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

Provision when it appears that omission to provide for children was by mistake.

SEC. 150. When any share of the estate of the testator shall be assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will would thereby be defeated, in which case such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

Proceedings as to estate assigned to child born after making will.

SEC. 151. When a devise or any legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, having issue who shall survive the testator, such issue shall take the estate so given by the will in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Proceedings when devisee or legatee die before testator, having issue who shall survive testator.

SEC. 152. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constitut-

Estate of testator liable for debts and expenses.

ing the family of the testator, out of his personal estate or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

Debts and expenses to be paid according to provisions of will.

SEC. 153. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

If provisions of will insufficient, how debts to be paid.

SEC. 154. If the provisions made by the will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Specific devises exempted.

SEC. 155. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Liabilities, how settled.

SEC. 156. When the estate given by any will, shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court, and until the devises and legacies so liable shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

Devisees liable proportionate.

SEC. 157. All the devisees and legatees who shall, with the consent of the executor, or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute, according to their respective liabilities, to the executor or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this subdivision, shall be liable to contribute in like manner as the devisees or legatees.

When one or more devisees insolvent.

SEC. 158. If any of the persons liable to contribute, according to the provisions of the preceding section, shall be insolvent, and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to and to the extent of the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

Probate court to settle amount of liability.

SEC. 159. The probate court may, by decree for that purpose, settle the amount of the several liabilities as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require, and the claimant may also have a remedy in any proper action or complaint in law or equity.

Certificate of proof of will to be indorsed thereon or annexed.

May be read in evidence.

SEC. 160. Every will, when proved as provided in this subdivision, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof, or a transcript of such record, certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this territory, without further proof.

Copy of will to be recorded in the registry of deeds.

SEC. 161. An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

What the word "executor" shall include.

SEC. 162. The word "executor" in this chapter shall be construed to include an administrator with the will annexed.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

Letters testamentary, when and to whom issued.

SEC. 163. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon, to the person named executor therein, if he is legally competent, and he shall accept the trust and give bond as required by law.

Bond of executor.

SEC. 164. Every executor, before he shall enter upon the execution of his trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and to the will of the testator, all his goods, chattels, rights, credits and estate which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies and charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court within one year, and at any other time when required by such court; and to perform all orders and decrees of the probate court, by the executor to be performed in the premises.

Same, when residuary legatee.

SEC. 165. If, however, the executor shall be a residuary legatee, instead of the bond described in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

SEC. 166. No person named as executor in any will, who shall refuse to accept the trust, or shall neglect to give bond as prescribed in this subdivision, for twenty days after the probate of such will, shall intermeddle or act as executor.

Refusal to accept trust for twenty days.

SEC. 167. If a person named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of estate with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

Duty of court in case of such refusal.

SEC. 168. When the person named executor in any will, is under full age at the time of proving the will, administration shall be granted with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond, and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor on giving bond according to law.

When person named executor is under full age.

SEC. 169. Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate in the same manner and with the same condition as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Duty of administrator with the will annexed.

SEC. 170. When an unmarried woman, appointed an executrix alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

Effect of marriage of executrix.

SEC. 171. If an executor shall reside out of this territory, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuit-

When probate court may remove executor.

able to discharge the trust, the probate court may remove such executor.

Who to execute trust.

SEC. 172. When an executor shall die or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration with the will annexed may be granted of the estate not already administered.

Proceedings where all the executors not authorized to act.

SEC. 173. When an executor appointed in any will, shall not be authorized, according to the provisions of this subdivision, to act as such, such as are authorized shall have the same authority to perform every act and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose, as if all were authorized and should act together; and administrators with the will annexed, shall have the same authority to perform every act and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

Duty of court upon death of only surviving executor.

SEC. 174. The executor of an executor shall not, as such, have any authority to administer the estate of the first testator, but on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

Bond, when two or more persons are appointed executors.

SEC. 175. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them, with sureties, or a joint bond from all of them, with sureties.

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

Personal estate not disposed of by last will, how applied and distributed.

SEC. 176. When any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

First. The widow, if any, shall be allowed all the articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars, and other personal property, to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provision made for her in the will of her husband as when he dies intestate.

Second. The widow and children constituting the family of the deceased, shall have such reasonable allowance out of the personal estate as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances, which, in case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow.

Third. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children until they arrive at the age of seven years, out of such part of the personal estate and the income of such part of the real estate as would have been assigned to their mother if she had been living.

Fourth. If, on the return of the inventory of any estate, it shall appear that the value of the saleable estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration.

Fifth. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowances mentioned in the preceding subdivisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral, and of settling his estate.

Sixth. The residue, if any, of the personal estate shall be distributed in the same proportion, to the same persons, and for the same purposes as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue as a child of such intestate would be entitled to.

In what county letters of administration granted

SEC. 177. When any person shall die intestate, being an inhabitant of this territory, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death. If such deceased person, at the time of death, resided in any other territory, state or country, leaving estate to be administered in this territory, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this territory, and shall exclude the jurisdiction of the probate court of every other county.

Extent of first legal administration.

To whom administration of intestate estate granted.

SEC. 178. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same, in the following order:

First. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust.

Second. If the widow, or next of kin, or the person selected by them, shall be unsuitable or incompetent, or if the widow or next of kin shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it.

Third. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

Bond.

SEC. 179. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

Duty of judge in case of delay in granting letters.

SEC. 180. When there shall be a delay in granting letters testamentary, or of administration, occasioned by an appeal from the allowance or disallowance of the will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed, and no appeal shall be allowed from the appointment of such special administration.

Duties of special administrator.

SEC. 181. An administrator appointed according to the provisions of the preceding section, shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

Liabilities of special administrator.

SEC. 182. Such special administrator shall not be liable to an action by any creditor, to be called upon in any other way to pay the debts against the deceased.

Special administrator to give bond.

SEC. 183. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate, as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased, which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts and effects of the deceased, which shall be received by him whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

When power of special administrator to cease.

SEC. 184. Upon granting letters testamentary, or of administration, on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

Persons embezzling, etc., effects of deceased. liable to executor, etc.

SEC. 185. If any person, before the granting of letters testamentary, or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

When executor shall die, duty of probate court.

SEC. 186. When any such executor or administrator shall die without having fully administered the estate, the probate court may grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased not already administered.

When administrator may be removed.

SEC. 187. If any administrator shall reside out of this territory, or shall neglect, after due notice by the judge of probate, to render his account and to settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable and incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

Marriage of administratrix shall extinguish her authority.

SEC. 188. When an unmarried woman who is administratrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as administratrix.

When administrator is removed, etc., etc., remaining administrator to act. If no other, judge to appoint.

SEC. 189. When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered to some suitable person, as in case of the death of a sole administrator.

Powers of administrator appointed to fill vacancy.

SEC. 190. An administrator appointed in the place of any former executor or administrator for the purpose of administering the estate not already administered, shall have the same powers, and shall proceed in settling the estate in the same manner, as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

Proceedings where will proved, etc., after letters of administration granted.

SEC. 191. If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

Same.

SEC. 192. The executor of the will shall, in such case, be entitled to demand, sue for, and collect all the goods, chattels, rights and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Acts of executor, etc., before revocation of letters, valid.

SEC. 193. All acts of an executor or administrator as such, before the revocation of his letters testamentary, or of administration, shall be as valid to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

When two or more administrators appointed, judge may take joint or separate bond.

SEC. 194. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each, with sureties, or a joint bond, with sureties from all.

On application for appointment of administration, judge to publish notice.

SEC. 195. When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration, with the will annexed, he shall cause notice of the same, and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

Every executor or administrator to return inventory.

SEC. 196. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, which shall have come into his possession or knowledge, excepting only that an executor who shall be a residuary legatee and shall have given bond to pay all the debts and legacies as provided by law, shall not be required to return an inventory.

Estate to be appraised.

SEC. 197. The estate and effects comprised in the inventory, shall be appraised by two or more disinterested persons appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust, and if any part of such estate or effects shall be in any other county, appraisers thereof may be appointed either by the judge of probate having jurisdiction in the case, or by a disinterested justice of the peace of such other county.

Order when appraisers appointed by justice of the peace.

SEC. 198. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them in substance as follows:

TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

To ——— *of* ———, *in said County:*

You are hereby appointed to appraise, on oath, the estate and effects of ———, late of ———, deceased, which may be in said county, and when you have performed that service you are required to deliver this order, and your doings in pursuance thereof, to ———, executor or administrator, as the case may be, of said deceased.

Given under my hand this ——— day of ———, in the year A. D. 18—.

———, *Justice of the Peace.*

Duty of appraisers.

SEC. 199. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

What property inventoried.

SEC. 200. A separate and distinct inventory and appraisement shall be made and returned as aforesaid, of all the household furniture and other personal property which may be allowed to the widow pursuant to the provisions of this chapter, but the same shall not be considered assets in the hands of the executors or administrators.

With what the estate is chargeable.

SEC. 201. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased and the expenses of administration, the whole of his real estate except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose, by the executor or administrator, after obtaining license therefor in the manner provided by law.

To what estate the executor has right of possession.

SEC. 202. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents, issues and profits of the real estate, until the estate shall have been settled, or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings and fences thereon which are under his control.

On complaint of concealment or embezzlement, judge to issue citation.

SEC. 203. If any executor or administrator, heir, legatee, creditor or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, carried away or disposed of any money, goods or chattels of the deceased, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

Proceedings thereon.

SEC. 204. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by a warrant for that purpose, commit him to the county jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

Citation to issue upon

SEC. 205. The judge of probate, upon the complaint

complaint of executor, etc.

on oath of any executor or administrator, may cite any person who shall have been entrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to such estate which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon, and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

When executor may compromise with debtor.

SEC. 206. When any debtor of any deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compromise with such debtor, and give him a discharge, upon receiving a fair and just dividend of his effects.

When mortgagee shall die before foreclosure, executor may foreclose.

SEC. 207. When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same and have any other remedy for the collection of such debt which the deceased could have had if living, or may continue any proceedings commenced by the deceased for that purpose.

Same.

SEC. 208. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same for the same persons, whether creditors next of kin or others, who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

Estate so held may be sold for the payment of debts or legacies.

SEC. 209. Any real estate so held by an executor or administrator, or which may be purchased by him as such, upon a sale on execution, for the recovery of a debt due the estate, may be sold for the payment of debts or legacies and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, in the manner provided by law.

Proceedings where lands so held are not sold.

SEC. 210. If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them in like manner as if it were real estate which the deceased held in his lifetime.

Power of executor in cases where deceased had conveyed real estate to defraud creditors.

SEC. 211. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit at law, or in chancery, for the recovery of the same, and may recover, for the benefit of the creditors, all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Executor not bound to sue except on application of creditors.

SEC. 212. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

How and for what purpose such real estate sold.

SEC. 213. All real estate so recovered as provided in the two hundred and eleventh section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights and credits recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other debts in the hands of the executor or administrator.

PAYMENTS OF DEBTS AND LEGACIES OF DECEASED PERSONS.

When letters granted, duty of judge to examine and adjust claims, etc.

SEC. 214. When letters testamentary or of administration shall be granted by any probate court, it shall be the duty of the probate judge to receive, examine, adjust and allow all claims and demands of all persons, against the deceased, giving the same notice as is required to be given by commissioners in this subdivision: *Provided*, That the parties interested, or either of them, shall have the right to demand that two or more suitable persons be appointed commissioners, in which case, said commissioners shall receive, examine and adjust all claims and demands against the estate, as provided for in this subdivision, except when the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law, in which case such assignment shall be deemed a full and final administration and bar to all claims against the estate. When such commissioners shall be appointed, it shall be their duty to appoint convenient times and places when and where they will meet for the purpose of examining and allowing claims; and within sixty days after their appointment they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this territory, or in any other manner which the court may direct.

Property assigned for support of widow.

Duty of commissioners.

Duty of probate judge as to notice.

SEC. 215. The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the several towns in which it shall be required to be posted, or other mode of notifying which he may deem necessary and proper.

Duty of probate judge if commissioners die, etc.

SEC. 216. If any commissioner appointed by the probate court shall at any time die, remove out of the territory, refuse, or become in any other way incapacitated, to perform the duties of his appointment, the court may appoint another commissioner in his place, and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

Time allowed for creditors to present claims.

To be stated in commission.

SEC. 217. The probate court shall allow such time as the circumstances of the case shall require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months, and the time allowed shall be stated in the commission.

Time may be extended

SEC. 218. The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

When court may renew commission and allow further time

SEC. 219. On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claims, in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

Judges may adjust claim in person.

SEC. 220. In the case mentioned in the preceding section, if the judge of probate shall think proper, instead of renewing the commission he may appoint a time and place for examination and adjustment of such claim, before himself, and cause personal notice thereof to be given to the parties, and in that case he shall proceed to examine and adjust such claim in like manner as the same might have been done by such commissioners.

Offset against creditors' claim.

SEC. 221. When a creditor against whom the deceased had had claims, shall present a claim to the commissioners, the executor or administrator shall exhibit the claim of the deceased in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be, but no claim barred by the statute of limitation shall be allowed by the commissioners in favor of or against the estate as a set-off or otherwise.

Oath of commissioners. SEC. 222. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

Report of commissioners. SEC. 223. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make up a report of their doings to the probate court, embracing lists of the claims presented or exhibited in offset, and stating how much was allowed and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate, and the report shall state particularly the manner of giving notice to the claimants. What to embrace.

Power of commissioners. SEC. 224. The commissioners shall have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands at their present value which may be payable at a future day, including claims payable in specific articles, and may set off such demands in the same manner in favor of the estate.

Executor may pay debts payable at a future day. SEC. 225. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day according to the terms and at the time specified in the contract.

A person who shall not exhibit claim, to be forever barred. SEC. 226. Every person having a claim against a deceased person proper to be allowed by the commissioners, who shall not, after the publication of notice as required in the two hundred and fourteenth section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand or from setting off the same in any action whatever.

SEC. 227. When commissioners shall be appointed as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions to recover the possession of real estate and actions to recover the possession of personal property; nor shall any attachment or execution be issued against the estate of the deceased until the expiration of the time limited by the court for the payment of debts.

When commissioners appointed, no action to be commenced, etc.

SEC. 228. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment; and the executor or administrator may be admitted to defend the same, and if the judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

Proceedings in action pending against deceased at time of death.

SEC. 229. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery of any debt or claim to final judgment, or from having execution on any judgment.

What construction shall not be given to this chapter.

SEC. 230. In such case the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims will be set off in such action, and if final judgment shall be rendered in favor of the defendant, the same shall be certified, by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

Set off of any claim against deceased.

SEC. 231. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners as if the contract had been joint and several, or as if the judgment had been against him alone; and the

Proceedings in case of death of one of several joint contractors.

Power of commissioners.

other parties to such joint contract may be compelled to contribute or pay the same, if they would have been liable to do so upon payment thereof by the deceased.

Per diem of commissioners.

SEC. 232. The commissioners provided for by this subdivision shall receive two dollars per day as compensation for every day of actual service.

Appeal to district court.

SEC. 233. Any executor, administrator or creditor may appeal from the decision and report of the commissioners, to the district court of the same county, if application for such appeal be made in writing and filed in the probate office within sixty days after the return of the report of the commissioners.

Appeal bond.

SEC. 234. In case of an appeal by a claimant against the estate, he shall, within the time aforesaid and before such appeal is allowed, give a bond to the adverse party, with sufficient surety, to be approved by the judge of probate and filed in his office, with a condition that he shall prosecute his appeal to effect and pay all damages and costs which may be awarded against him on such an appeal.

Cases where appeal may be allowed.

SEC. 235. No appeal shall be allowed from the decision and report of the commissioners except in the following cases:

First. When such commissioners shall disallow any claim in favor of any creditor or of the estate, in whole or in part, to the amount of twenty dollars.

Second. When the commissioners shall allow any claim in whole or in part, and the sum allowed being objected to shall amount to twenty dollars; in either of which cases the aggrieved party may appeal.

Notice of appeal.

SEC. 236. In all cases of appeal from the decisions of the commissioners, the person appealing shall give notice of such appeal and of the hearing thereof in the district court in such manner as the judge of probate shall direct, at least twelve days before the next term thereof, after the appeal is allowed, if there shall be so many days, and if not, as soon as may be.

Certified copy of record to be filed.

SEC. 237. The party appealing shall procure and file in the district court to which the appeal is taken, at or before the next term of said court after the appeal is allowed, a certified copy of the record of the allowance or disallowance appealed from, of the application for the appeal and the allowance of the same, together with the proper evidence that notice has been given to the adverse party according to the order of the probate court.

Proceedings on appeal.

SEC. 238. When such certified copy shall have been filed in the district court, such court shall proceed to the trial and determination of the same according to the rules of the law, allowing a trial by jury of all questions of fact in cases where such trial may be proper; and such court may direct an issue to be made up between the parties in a brief form when it shall be deemed necessary; and questions of law may be carried to the supreme court, and costs may be allowed or denied in the discretion of the court.

Final decision to be certified to probate court.

SEC. 239. The final decision and judgment in cases so appealed shall be certified by the district court or the supreme court, as the case may be, to the probate court, and the same proceedings shall be had thereon as if such decision had been reported by the commissioners.

Claim not prosecuted, to be forever barred.

SEC. 240. If any claimant appealing on account of the disallowance of his claim by the commissioners, shall fail to prosecute his claim in the district court, to which his appeal is taken, such claim shall be forever barred, and said court may allow costs to the appellee.

When court may affirm allowance.

SEC. 241. If the person objecting to a claim and appealing on account of the allowance of such claim, shall neglect to prosecute his appeal, the court to which the appeal shall be taken, on motion of the adverse party, and on his producing an attested copy of the records of the probate court showing such appeal, shall affirm the allowance appealed from, and may allow costs against the appellant.

When and how persons interested may appeal.

SEC. 242. When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate as creditor, devisee, legatee or heir, may appeal from such decision in the same manner as the executor or administrator might have done, and the same proceedings shall be had in the name of the executor or administrator: *Provided*, That the person appealing in such case shall, before the appeal shall be allowed, give a bond to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

Proceedings when disallowance of claim of executors, etc., appealed from.

SEC. 243. When an executor or administrator shall have a claim against the estate which he represents, which shall be disallowed by the commissioners, and he shall take an appeal therefrom to the district court, notice of such appeal shall be given to all concerned by personal service thereof, or by publication under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before the hearing of the appeal.

LIMITATION OF TIME FOR PAYING DEBTS.

Probate court shall fix a time for paying debts of deceased.

SEC. 244. The probate court, at the time of granting letters testamentary or letters of administration, shall make an order allowing to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

Time may be extended.

SEC. 245. The probate court may, on application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years.

Proceedings on application for time beyond one year and six months.

SEC. 246. When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of application and of the time and place of hearing to be given to all persons interested, by publication, three weeks successively, in some newspaper to be designated by the court, and no such order extending the time shall be granted unless such notice shall have been previously given.

When executor, etc., shall die, a new one to be appointed, and time may be extended.

SEC. 247. When an executor or administrator shall die or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator, upon due notice given as required in the preceding section.

OF THE DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.

If assets sufficient, debts, etc., to be paid within time limited.

SEC. 248. If, after the report of the commissioners and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

Order of paying debts where assets insufficient.

SEC. 249. If the assets which the executor or administrator may have received and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

First. The necessary funeral expenses.

Second. The expenses of the last sickness.

Third. Debts having a preference by the laws of the United States.

Fourth. Debts due to other creditors.

Same.

SEC. 250. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

Decree for the payment of debts.

SEC. 251. After the return of the report of the commissioners, and at or before the expiration limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts and the distribution of the assets which may have been received by the executor or administrator, at the time fixed for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this subdivision.

Duty of probate court where appeal is

SEC. 252. If an appeal shall have been taken from the decision of the commissioners, and shall remain undetertaken from decision of commissioners. mined, the probate court may suspend the decree for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

Order of court when disputed claim settled. SEC. 253. When the disputed claim shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent and in the same proportion as the claims of other creditors.

When probate court may make further decree for distribution of assets. SEC. 254. If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

When executor shall be personally liable, or upon his bond. SEC. 255. Whenever a decree shall have been made by the probate court, for the distribution of the assets among the creditors, the executor or administrator of the estate, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debts, or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend shall not be paid as above mentioned.

Notice to be given of time limited for payment of debts. SEC. 256. When the time for paying the debts of a deceased person shall be finally limited by order of the probate court or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts, which notice shall be given How given. by publishing the same at least three weeks successively, in some paper to be designated by the court, or in such other manner as the court may direct.

When claim of creditor forever barred. SEC. 257. If, after notice shall have been given, as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator, his debt or the dividend thereon, within two years from the time so limited for the payment of the debts, or if the notice shall have been given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

CONTINGENT CLAIMS.

SEC. 258. If any person shall be liable as security for the deceased, or have any other contingent claim against his estate, which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented, with the proper proof, to the probate court or to the commissioners, who shall state the same in their report, if such claim was presented to them. **Proceedings in case of contingent claims.**

SEC. 259. If the court shall be satisfied, from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient to pay such contingent claim, when the same shall become absolute; or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of other creditors. **Same.**

SEC. 260. If such contingent claim shall become absolute, and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report; and the persons interested shall have the same right of appeal as in other cases. **Proceedings when contingent claims become absolute.**

SEC. 261. If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditor shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but if the claim shall not be finally established, as provided in the preceding section, or if the assets retained in the hands of the executor or administrator, shall not be wholly exhausted in payment of such claim, such **Same.**

assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same according to law.

Same.

SEC. 262. If the claim of any person shall accrue or become absolute at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute; and if established in the manner provided in this subdivision, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay, and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

Same.

SEC. 263. When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have the right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real or personal property from the estate.

Action.

SEC. 264. If any action shall be commenced against an executor or administrator on such claim as mentioned in section two hundred and sixty-two, and for the payment of which sufficient assets shall not have been retained, as before provided, the executor or administrator may give notice, under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

What notice may be given under plea.

When defendant to be discharged.

SEC. 265. If it shall appear, on the trial of such action, that the defendant had fully administered at the time the claim was presented, and had no assets which could lawfully be appropriated for that purpose, he shall be discharged and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a

When judgment against defendant.

part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

When and to what extent heirs, devisees and legatees liable.

SEC. 266. When the heirs, devisees or legatees shall have received real or personal estate, and shall be liable for any debts, as mentioned in this subdivision, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received; but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

When legatees, etc., liable to contribute among themselves.

SEC. 267. If, by the will of the deceased, any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only, according to the will.

Proceedings when all persons liable, not included in action.

SEC. 268. If all the persons liable for the payment of any such debt shall not be included in any such action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending, may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

Same.

SEC. 269. If more than one person shall be liable, as aforesaid, and the creditor shall bring a suit in chancery, against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

When estate of deceased devisee, etc., liable.

SEC. 270. If any of the heirs, devisees or legatees shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable, if living.

When devisees, etc., pay more than their share, other persons liable to be holden.

SEC. 271. When any of the heirs, devisees or legatees shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the cases of devisees and legatees in this chapter.

Effect of omitting to appoint commissioners.

SEC. 272. If the appointment of commissioners to allow claims shall in any case be omitted, no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executors, administrators, heirs, devisees or legatees as provided by law, and in such case a claimant having a lien upon the real or personal estate of the deceased by attachment previous to his death, may, on obtaining judgment, have execution against such real or personal estate.

No action commenced unless provided for in this chapter, except in cases provided for in the preceding section.

SEC. 273. In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payments, except in the case provided for in the preceding section.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

With what executors shall be chargeable.

SEC. 274. Every executor and administrator shall be chargeable in his account with the whole of the goods, chattels, rights and credits of the deceased which may come to his possession, also with all the proceeds of the real estate which may be sold for the payment of debts and legacies, and with all the interest, profit and income that shall in any way come to his hands from the estate of the deceased.

Same.

SEC. 275. Every executor and administrator shall account for the personal estate of the deceased as the same shall be appraised, except as provided in the following section.

Executors not to

SEC. 276. An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the personal estate, and he shall account for the excess when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

profit by increase nor lose by decrease of personal estate.

Their duty when personal estate is sold for more than appraisal.

Sec. 277. The probate court, on the application of the executor or administrator, may, at any time, order the personal estate to be sold at private sale or at public auction, when it shall appear to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this territory; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

The probate court may order personal estate to be sold.

Sec. 278. When the executor or administrator shall sell personal estate under an order of the probate court, he shall account for the same at the price for which it shall be sold.

Executor, etc., to account at the price sold.

Sec. 279. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

When executor not accountable for debts due deceased.

Sec. 280. The executor or administrator shall also be accountable for the income of the real estate, while it shall remain in his possession; and if he shall use or occupy a part of it, he shall account for it as shall be agreed upon between him and the parties interested, or adjudged by the court with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons to be appointed by the probate court, whose award being accepted by such court, shall be final.

Executor accountable for income of real estate.

Also for use and occupation.

Sec. 281. When an executor or administrator shall neglect or unreasonably delay to raise money, by collecting the debts or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have

What shall be deemed waste, and when executor, etc., liable.

in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

When executor, etc., to render account.

SEC. 282. Every executor or administrator shall render his account of his administration, within one year from the time of his receiving letters testamentary or of administration, unless the court shall give permission to delay, in consideration that the time for selling the estate and paying debts shall be extended; and he shall render such further account of his administration from time to time, as shall be required by the court, until the estate shall be wholly settled; and he may be examined on oath upon any matter relating to his account.

Executor to be allowed necessary expenses.

SEC. 283. The executor or administrator shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides, together with all extra expenses: *Provided*, That when the deceased shall, by his will, make some other provision for compensation to his executor, that shall be deemed full compensation for his services, unless he shall, by a written instrument filed in the probate court, renounce all claim to the compensation provided by the will.

Commissions allowed executor.

SEC. 284. When no such compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts, as follows: for the first thousand dollars at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent.; and for all above five thousand dollars at the rate of one per cent.; and the same commissions shall be allowed to administrators; and in all cases such further allowances may be made as the judge of probate shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty.

SEC. 285. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, he shall be liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

When executor liable on his bond for damages.

SEC. 286. When costs are allowed in any case against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the cost shall be taxed, shall have been prosecuted or resisted without just cause.

Provisions as to costs in suit against executor.

SEC. 287. Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same, and such notice may be given personally to such persons as the probate court shall judge to be interested, or by public notice under the direction of the court.

Notice to be given before administration account allowed.

PARTITION AND DISTRIBUTION OF ESTATES.

SEC. 288. Before any partition or division of any estate among the heirs, devisees or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased under seven years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose, except where some provision shall be made by will for their support.

Allowance to be made for support of family before partition of estate.

SEC. 289. After the payment of the debts, funeral charges, and the expenses of administration, and after the allowances made for the expenses of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower, and of her share in the personal estate, or when sufficient effects shall be reserved in the hands of the executor or administrator, for the above purposes, the probate court, shall, by a decree for that

Assignment of residue.

purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same.

What court shall name in decree.

SEC. 290. In such decree, the court shall name the persons, and the proportions or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

On whose application decree made

SEC. 291. Such decree may be made on the application of the executor or administrator, or of any person interested; but no heir, devisee or legatee shall be entitled to a decree for his share, until payment of the debts, and allowances and expenses, mentioned in the preceding section, shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

When estate assigned to two or more shall be in common—commissioners to be appointed.

SEC. 292. When the estate, real or personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separate and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties, before the judge of probate or a justice of the peace, and the judge of probate shall issue a warrant to them for that purpose.

Different commissioners for each county.

SEC. 293. If the real estate shall lie in different counties, the probate court may, if it shall be judged proper, appoint different commissioners for each county, and in such case the estate in each county shall be divided separately, as if there was no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this territory.

Proceedings on application for such partition.

SEC. 294. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this subdivision, notice shall be given to all persons interested, who reside in this territory, or their guardians, and to the agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court shall direct.

Partition where some of the heirs have conveyed shares.

SEC. 295. Partition of the real estate may be made as provided in this subdivision, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

How several shares set out.

SEC. 296. The several shares in the real and personal estate, shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same may be easily distinguished, unless any two or more of the parties interested shall consent to have their shares set out so as to be held by them in common and undivided.

Power of court when real estate cannot be divided.

Party accepting to pay to other parties their proportion.

SEC. 297. Whenever any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and among children preferring the elder to the younger, provided the party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court and sworn for that purpose.

Proceedings when tract of land, etc., indivisible, and of greater value than either party's share.

SEC. 298. When any tract of land, messuage or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as described in the preceding section, provided the party accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Proceedings when estate of deceased shall be in common with that of another person.

SEC. 299. When partition of real estate among heirs or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common and undivided, with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common; and such division so made and established by the probate court, shall be binding on all the persons interested.

Before partition, agents and guardians to be appointed, and notice of appointment given.

SEC. 300. Before any partition shall be made, or any estate divided, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the territory; and notice of the appointment of such agents shall be given to the commissioners in their warrants; and notice shall be given to all the persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Reports of commissioners and proceedings of court thereon.

SEC. 301. The commissioners shall make report of their proceedings to the probate court in writing; and the court may, for sufficient reasons, set aside such report and commit the same to the same commissioners, or appoint others; and the report when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof, attested by the judge of probate under the seal of the court, shall be recorded in the office of the county clerk of the county where the lands lie.

When appointment of commissioners not necessary.

SEC. 302. When the probate court shall make a decree assigning the residue of an estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, request that such partition be made.

Concerning questions as to advancements.

SEC. 303. All questions as to advancements made, or alleged to be made, by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the probate court, or, in case of an appeal, of the circuit or supreme court, shall be binding on all persons interested in the estate.

SEC. 304. Any person aggrieved by an order, decree or denial of a probate court, in pursuance of the provisions of this subdivision, may appeal therefrom as provided in other cases.

Appeal allowed.

SEC. 305. The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

Partition when confirmed to be conclusive.

SEC. 306. If, at the time of the partition and distribution of any estate, as provided in this subdivision, the executor or administrator shall have retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it shall appear to the court just and equitable, and not inconsistent with the intention of the testator.

When expenses of partition may be paid by executor, etc.

SEC. 307. But if there are no effects in the hands of the executor or administrator, which may be lawfully applied to that purpose, the expenses and charges of the partition, being ascertained by the probate court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and the proportion shall be settled and allowed by the probate court; and if any one shall neglect to pay the sum assessed on him by such court, an execution may be issued therefor against him by such court, in favor of the person entitled to the same.

When paid by all the parties interested.

SEC. 308. When the term of a widow entitled to dower or other life estate in the lands of a deceased person shall expire, the reversion may be assigned to the person entitled to the same, and partition thereof be made in the manner prescribed in this subdivision, in relation to other estates of deceased persons.

When and how reversion assigned on expiration of term.

SEC. 309. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this subdivision, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take posses-

Agent appointed for non-resident.

sion and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

Agent to give bond, and be allowed reasonable compensation.

SEC. 310. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate, for his services and expense.

PROBATE BONDS, AND THE PROSECUTION OF THEM.

Character of bonds required to be taken.

SEC. 311. All bonds required by law to be taken in or by order of the probate court, shall be for such sum and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate, except where they are required by law to be taken to the adverse party.

When suit may be brought on bond.

SEC. 312. A suit may be brought on the bond of an executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

By whom.

SEC. 313. Such a suit may be brought by any person as next of kin to recover his share of the personal estate, after a decree of the probate court, declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

Action against executor failing to perform his duty.

SEC. 314. When it shall appear, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee, or other person aggrieved by such mal-administration, to bring an action on the bond.

When probate judge to

SEC. 315. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies or distributive shares, such judge of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

cause bond of executor to be prosecuted.

SEC. 316. In all suits upon such bonds, the writ and proceedings shall be in the name of the judge of probate; and when the action is brought for the benefit of any particular person, as creditor, next of kin or legatee, as provided in this subdivision, the execution shall express that it is for the use of such creditor, next of kin or legatee, and in such case, the person for whose use the action is brought shall be deemed the plaintiff.

Proceedings in suit on bond.

SEC. 317. On the application of any person authorized by this subdivision to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fee, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

When other person authorized to bring suit, judge to furnish copy of bond.

SEC. 318. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with cost of suit.

When judgment for plaintiff, proceedings.

SEC. 319. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought by the judge of probate for any breach thereof, in not performing any order or decree of the judge of probate, as mentioned in the three hundred and fifteenth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased, that shall have come to the hands of such executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damage as shall have been occasioned by his neglect or mal-administration, with cost of suit.

Same.

Same.

SEC. 320. All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such other person than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands, to be administered according to law.

When and where *scire facias* may be sued out.

SEC. 321. Any person who may be injured by the breach of the conditions of such bond, may afterwards, from time to time, sue out and prosecute a *scire facias* in his own name, to enforce any judgment which may have been rendered for the penalty of such bond, and in such *scire facias* shall assign and set forth the breaches on which he relies, and may therein recover such damages as he may prove, with costs.

Executor may prosecute for damage for breach of bond.

SEC. 322. Claims for damages on account of the breach of the conditions of any bond may be prosecuted by an executor, administrator or guardian, in behalf of those he may represent, in the same manner as by persons living in and of full age; and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Probate court may compel enforcement of contract for conveyance of land.

SEC. 323. When any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

Proceedings before making such conveyance.

SEC. 324. On the presentation of a petition, by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge of probate shall appoint a time and place for hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing in such newspaper or newspapers in this territory as he may deem necessary.

SEC. 325. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the probate court and defend against such petition, and the court may examine on oath the petitioner, and all others who may be produced before them for that purpose. Same.

SEC. 326. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition according to the provisions of this subdivision, he shall thereupon make a decree authorizing and directing the executor or administrator to make and execute a conveyance thereof to such petitioner. Same.

SEC. 327. Any person interested may appeal from such decree to the district court for the same county, as in other cases, but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree; and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance. Appeal from decree allowed.

SEC. 328. If, upon a hearing in the probate court, as hereinbefore provided, the judge of probate shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided. When court shall dismiss petition.

SEC. 329. Whenever any person who is bound by any contract to convey any real estate, shall die before making the conveyance, the person entitled thereto, may have a bill When specific performance may be enforced by bill in chancery. in the court of chancery to enforce a specific performance of the contract, by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

Proceedings on such bill. SEC. 330. The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein, as justice and equity shall require.

Same. SEC. 331. If it shall appear that the complainant is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this territory, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to join in such conveyance with the executor or administrator.

Effect of conveyance made in pursuance of decree. SEC. 332. Every conveyance made in pursuance of a decree of the probate court, or the court of chancery, as provided in this subdivision, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living and then executed the conveyance.

What right given by registered copy of decree. SEC. 333. A copy of the decree for conveyance made by the probate court, and duly certified and recorded in the office of the county clerk in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the clerk or register of that court, and recorded as aforesaid, shall give the person entitled to such conveyance, a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Recording decree not to prevent court from enforcing the same. SEC. 334. The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by any proper process according to the course of proceedings therein.

If person to to whom conveyance was to be made, die, SEC. 335. If the person to whom the conveyance was to be made shall die before the commencement of proceedings according to the provisions of this subdivision, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

heir, etc., may prosecute.

CHAPTER XV.

DEPUTIES.

SECTION 1. The territorial auditor, treasurer and librarian respectively, and each county register of deeds, treasurer, sheriff, clerk and surveyor, may appoint a deputy, for whose acts he shall be responsible and from whom he shall require a bond; which appointment shall be in writing, and shall be revocable by writing, under the principal's hand; and both the appointment and revocation shall be filed and kept in the office of the county clerk, in case of deputies for county officers, but in case of territorial officers, they shall be filed and kept by the principals.

What officers may appoint deputies.

Where appointment, etc., to be filed.

SEC. 2. In the absence or disability of the principal, the deputy shall perform the duties of his principal pertaining to his own office, but when an officer is required to act in conjunction with or in place of another officer, his deputy cannot supply his place.

What duties deputies may and may not perform.

SEC. 3. The territorial auditor, treasurer and librarian, can neither of them appoint the other his deputy, nor can either the register of deeds, treasurer, sheriff, clerk or surveyor of a county, appoint either of the others.

Certain officers cannot appoint certain others as deputies.

SEC. 4. The sheriff may appoint such number of deputies as he sees fit.

Sheriff's deputies unlimited.

SEC. 5. Each deputy shall take the same oath as his

Oath of deputies.

principal, which shall be indorsed upon and filed with the certificate of his appointment.

Compensation of deputies.

SEC. 6. When a county officer, receiving a salary and no fees, is compelled by the pressure of the business of his office to employ a deputy, the county commissioners may make a reasonable allowance to such deputy.

CHAPTER XVI.

DIVORCE AND ALIMONY.

Marriage void without decree.

SECTION 1. Marriages which are declared void by section three of chapter thirty-four, entitled "Marriages," are void without any decree of divorce.

Consent by force or fraud.

SEC. 2. In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

Petition for divorce.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned or referred to in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition or bill in the district court of the county where the parties, or one of them, reside, or in the court of chancery, for annulling the same, and such petition or bill shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof thereof, it shall be declared void by a decree or sentence of nullity.

Marriage, how declared valid.

SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court, and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

Marriage dissolved without decree.

SEC. 5. When either party shall be sentenced to imprisonment for life, the marriage thereby shall be absolutely dissolved, without any decree of divorce, or other legal process; and no pardon granted to the party so sentenced, shall restore such party to his or her conjugal rights.

Divorce, how decreed

SEC. 6. A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on the application by petition or bill of the aggrieved party, in either of the following cases:

First. When adultery has been committed by any husband or wife.

Second. When one of the parties was physically incompetent at the time of the marriage.

Third. When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction for three years or more; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights.

Fourth. Where either party shall willfully abandon the other, without good cause, for the term of two years.

Fifth. When the husband or wife shall have become an habitual drunkard.

Causes for granting divorce.

SEC. 7. A divorce from the bonds of matrimony or from bed and board, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by any other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

Residence.

SEC. 8. No divorce shall be granted unless the complainant shall have resided in this territory for six months immediately preceding the time of filing the complaint, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of the marriage to the time of filing the complaint.

Collusion or crime.

SEC. 9. No divorce shall be decreed in any case when it shall appear that the petition or bill therefor was founded in, or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

Petition and bill. SEC. 10. A petition or bill for a divorce may be exhibited by a wife in her own name, as well as a husband; and in all cases the respondent may answer such bill without oath.

Suit, how conducted. SEC. 11. Suits to annul or affirm, a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and enforce its decrees as in other cases.

Costs of suit, how paid. SEC. 12. In every suit brought, either for a divorce, or for a separation, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Restraint. SEC. 13. After the exhibition of the petition or bill in a suit to annul a marriage, or for a divorce, whether from the bonds of matrimony, or from bed and board, the court may, at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the cause.

Maintenance of minor children. SEC. 14. The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

With whom minor children may remain SEC. 15. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bonds of matrimony or from bed and board, the court may make such further decree as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain.

Court may alter decree.

SEC. 16. The court may from time to time, afterward, on the petition of either of the parents, revise and alter such decree, concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

Possession of real estate

SEC. 17. Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause, excepting that of adultery committed by the wife, shall be decreed; and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

Court may make further decree.

SEC. 18. Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband, by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

Court may appoint trustees.

SEC. 19. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust, to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

Trustees to give bonds.

SEC. 20. Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions and at such times as the court shall direct, regard being had in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require, for the faithful performance of their trust.

Husband may be examined on oath.

SEC. 21. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose, on oath, what personal estate has come to him, by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

Decree for support of wife and children.

SEC. 22. Upon every divorce from the bonds of matrimony for any cause excepting that of adultery, committed by the wife, and also upon every divorce from bed and board, from any cause, if the estate and effects restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate as it shall deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

Wife, when entitled to dower.

SEC. 23. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery, committed by the husband, or misconduct or drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

When husband may hold real and personal estate.

SEC. 24. When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and he shall also hold her real estate, so long as they both shall live; and if he shall survive her, he shall hold her real estate for his own life, as tenant by curtesy.

Court may allow wife subsistence.

SEC. 25. In the case last mentioned the court may, by the decree, allow the wife for her subsistence, as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

Security required to pay alimony.

SEC. 26. In all cases where alimony or other allowance shall be decreed for the wife or children, the court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

Court may alter and revise decree.

SEC. 27. After a decree for alimony, or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters, which such court might have made in the original suit.

Legitimacy of children.

SEC. 28. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the case; and in every case the legitimacy of all children begotten before the commencement of the suit, shall be presumed until the contrary be shown.

Same.

SEC. 29. Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting.

Prior marriage

SEC. 30. When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be legitimate issue of the parent, who, at the time of the marriage, was capable of contracting.

Consanguinity. SEC. 31. Upon the dissolution by decree or sentence of nullity of any marriage that is prohibited on account of consanguinity between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

Penalties. SEC. 32. If any persons, after being divorced from the bonds of matrimony, for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

Marriage, how annulled. SEC. 33. A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had obtained the age of consent, had freely cohabited as man and wife.

Same. SEC. 34. A bill to annul a marriage on the ground of insanity or idiocy may be exhibited by any person admitted by the court to prosecute as the next friend to such idiot or lunatic.

Lunatic. SEC. 35. The marriage of a lunatic may also be declared void upon the application of the lunatic, after the restoration of reason, but in such case no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

Force or fraud. SEC. 36. If there shall be any issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

Physical incapacity. SEC. 37. A suit to annul a marriage on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party against the party whose incapacity is alleged, and shall, in all cases, be brought within two years from the solemnization of the marriage.

Confession and admission.

SEC. 38. No decree of divorce and of the nullity of a marriage shall be made solely on the declarations, confessions or admissions of the parties, but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the bill for that purpose.

In what cases court may deny divorce.

SEC. 39. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First. When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant.

Second. When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense.

Third. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

Order for maintenance.

SEC. 40. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

Revocation of decree, when.

SEC. 41. When a decree of divorce from bed and board forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

When married woman deemed inhabitant of territory.

SEC. 42. If any married woman, at the time of exhibiting a bill against her husband, under the provisions of either of the last two sections, shall reside in this territory, she shall be deemed an inhabitant thereof, although her husband may reside elsewhere.

CHAPTER XVII.

ELECTIONS.

General election second Tuesday in October.

SECTION 1. The general elections of this territory shall be held on the second Tuesday of October of each year.

What officers chosen.

SEC. 2. A delegate to Congress, one territorial treasurer, one territorial auditor, one territorial librarian, and members of the council, shall be elected at the general election in the year 1866, and every second year thereafter; members of the house of representatives, shall be elected annually at the said general election; one county commissioner for each county shall be elected annually at the general election, who shall serve for the term of three years; one probate judge, one sheriff, one coroner, one county treasurer, one county clerk, one county surveyor, and one prosecuting attorney for each county, and for each precinct two justices of the peace and two constables, shall be elected at the general election in the year 1867, and every two years thereafter; one assessor, three judges of election, and two clerks of election, shall be elected at the general election in the year 1866, and annually thereafter.

County commissioners to give notice.

SEC. 3. The several county commissioners shall, at least thirty days previous to any general election, cause three written or printed notices thereof to be posted up in each election precinct, containing a list of all the officers to be balloted for at said election; and in case of a special election such notices shall be given at least eight days prior thereto. The said notices shall be, as nearly as circumstances will admit, in form following:

Form.

Notice is hereby given, that on Tuesday, the —— day of October next, at the house of ———, in ———, an election will be held for delegate to Congress, one Councilman, etc. (*naming all the officers to be balloted for*), which election will be opened at nine o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day. By order of the County Commissioners, this —— day of ——, A. D. 18—.

A. B., *County Clerk.*

Opening and

SEC. 4. The polls at all general elections shall be opened at nine o'clock in the morning, and close at six o'clock in the afternoon of the same day. closing of polls.

Judges and clerks to qualify.

SEC. 5. Each judge and clerk of election provided for in section two of this chapter, shall, on or before the first Monday in December next after his election, present himself at the office of the county clerk, or any justice of the peace or other person authorized to administer oaths within the county, and take and subscribe an oath, in manner following:

Oath of office.

I do solemnly swear, that I will support the constitution of the United States, and the organic act of this Territory, and faithfully and impartially discharge the duties of —— for —— precinct, —— county, according to law and the best of my ability.

Which oath or affirmation shall be filed with the county clerk within ten days thereafter.

How vacancies in offices of judges or clerks of election to be filled.

SEC. 6. In the event of a vacancy in the office of clerk or judge of election, or if any person or persons elected shall not attend at the time and place of holding such general election, then the electors present at such election shall, at nine o'clock on the morning of the day of holding such election, choose the requisite number of persons to fill the respective offices of clerks and judges of election, and the person or persons thus chosen shall qualify as prescribed in section five, or before any member of said board, which oath shall be returned with the poll books to the county clerk, and placed on file in his office.

How to qualify.

Duties of judges and clerks.

SEC. 7. On the morning of the general election, the aforesaid judges and clerks shall proceed to the place of holding elections, and in the presence of the electors present, immediately before the opening of the polls, shall open the ballot box for inspection, and see that no ballots are therein contained, after which said box shall be again closed, and one of the judges shall make proclamation that the polls of that election are open, and they shall proceed immediately to take such ballots as may be offered them in accordance with the laws of this territory, and, without examining the same, shall immediately deposit them in the ballot box.

Poll books.

SEC. 8. The clerks of election, previous to the opening of the polls, shall prepare duplicate poll books, in the manner and form following:

Form.

Poll Books of an Election, held in ——— precinct, in ——— county, on the ——— day of ———, A. D. 18—, at which time A. B., C. D. and E. F. were Judges, and G. H. and J. K. were Clerks, of said election—the following named persons voting thereat:

1. A. B.
2. C. D.
3. E. F., etc. etc.

And each clerk shall take one of the said duplicates, and enter thereon the name of each person voting, immediately after his vote shall be deposited in the ballot box; and immediately after the close of the election, the following certificate, signed as therein specified, shall be appended to each duplicate poll book:

We do hereby certify, that the above is a true list of the persons voting at the above named election.

Attest:

	A. B.,
G. H.,	C. D.,
J. K.,	E. F.,
Clerks.	*Judges of Election.*

Receiving ballots. Duties of judges and clerks.

SEC. 9. One of the judges of election shall receive each ballot from the person offering to vote, at the same time announcing the name of such person in a clear, distinct voice, and if the judge shall be satisfied the person offering to vote is a legal voter, his ticket shall be placed in the ballot box, without inspecting the names written or printed thereon, and the clerks of election shall enter the name of the voter and the number in the poll book, agreeably to the form pointed out in the eighth section of this chapter; and the said ballots, after being counted, shall be sealed up in a package and delivered to the county clerk, who shall deposit the same ballots in his office, where they shall be safely kept for twelve months, and the county clerk shall not allow the same to be inspected, unless in cases of contested elections, or the same become necessary to be used in evidence in the courts.

Judge and clerk to challenge in certain cases.

SEC. 10. It shall be the duty of each judge and clerk of election to challenge the vote of every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector.

SEC. 11. The said judges shall possess full power and authority to maintain due regularity and order during any election, or the canvass of the votes after closing the polls; and in order to maintain the same, they are hereby empowered to call upon the sheriff, or any constable of the county, or to appoint some competent person, who shall carry out the orders of the said board of judges, and he may, by virtue of an order specifying the offense, duly made in writing and signed by them, or a majority of them, arrest any person for disorderly or boisterous conduct, or for a violation of the election laws of this territory, and confine such person within the common jail of the county, or in some secure place, during such time as said order may specify, not exceeding twenty-four hours, which said order shall be in manner and form following:

Judges have power to maintain and enforce order.

TERRITORY OF NEBRASKA, } *ss.*
——— COUNTY, }

To the Sheriff or any Constable of said County, (or to *A. B.*)

Whereas, C. D. has been guilty of (*here name the offense*) you are, therefore, commanded to arrest the said C. D., and convey him to the common jail of the said county of ———, and there confine him for the period of —— hours, or until he may be otherwise discharged by due process of law.

E. F.,
G. H.,
J. K.,
Judges of Election.

But such order shall not prohibit the person so arrested (if of sane mind,) from voting at such election.

SEC. 12. After the polls are opened, on the morning of the election, the ballot box shall not be removed from the view of the electors present until the polls are closed and all of the votes shall have been counted and canvassed; nor shall two of the judges be absent from the room or building in which the election is held, at the same time, during such voting and canvassing; and at the opening of the polls the ballot box shall be locked, and shall not be again unlocked until after the time of closing the polls.

Ballot box to be kept in view.

SEC. 13. Immediately after the closing of the polls the judges shall commence to canvass by counting all the votes polled. If the whole number of votes cast shall exceed

Votes, how canvassed.

the number of persons voting, as shown by the poll books of the clerks, the said ballots shall then be replaced in the ballot box, and after being mixed, one of the judges shall then proceed to draw from the box as many ballots as there shall have been cast exceeding the number as shown by the poll books, and they shall thereafter examine and canvass the votes there corresponding to the poll books, and announce to the clerks the number of votes each candidate balloted for shall have received.

Fraudulent ballots to be rejected.

SEC. 14. Whenever the judges of election shall find two or more ballots rolled or folded together, they shall reject the whole of such votes as fraudulent; and whenever a ballot shall contain a greater number of names for any one office than the number of persons required to fill that office, it shall be deemed fraudulent as to the whole of the names for that office, but no further; and no ballot shall be deemed fraudulent because it contains a less number of names than are authorized to be inserted.

Certificate after votes are counted.

SEC. 15. When all the votes shall have been examined and counted, the clerks shall set down on their tally-list, or on some paper attached thereto, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number of votes he received, which number shall be expressed in words at full length; such entry to be made in the following manner and form as nearly as may be:

At an election held in ——— precinct, in ——— county, and Territory of Nebraska, on the —— day of ——, 18—, the following named persons received the number of votes annexed to the names of the following described offices:

A. B. had one hundred votes for Delegate to Congress.
C. D. had sixty votes for Delegate to Congress.
E. F. had eighty votes for Territorial Treasurer.
G. H. had sixty votes for Territorial Treasurer.
J. K. had eighty votes for County Commissioner.
(*And in the same manner for all persons voted for.*)

Certified by us, this —— day of ——, A. D. 18—.

Attest: A. B.,
G. H., C. D.,
J. K., E. F.,
Clerks. *Judges of Election.*

Returns to be sealed up and returned to county clerk by one of the judges within four days.

SEC. 16. The judges of election shall then inclose one of the poll books and tally-lists, full and complete, in an envelope or cover, and seal the same, and direct the same to the county clerk of the county in which the election is held, and the packet thus sealed shall be conveyed to the said county clerk by one of the judges or clerks of election, within four days from the close of the polls; and the other poll books and tally-list shall be deposited with one of said judges, to be appointed by the said judges and clerks of election to receive the same, and the same shall be subject to the inspection of any elector who may wish to examine the same during the period of six months after such election shall have been held.

Judge to retain possession of ballot box.

SEC. 17. The ballot box at the close of each election shall be deposited with the judge of election appointed as aforesaid, who shall take charge of the same and be responsible for its safe-keeping; and he shall convey said ballot box, or cause it to be conveyed, to the place of holding elections in his precinct, at the next general or special election, and deliver, or cause the same to be delivered, to one of the judges of said election. The county commissioners of each county are hereby required to furnish each precinct with a substantial ballot box.

County clerk and two householders to canvass votes within six days after reception.

SEC. 18. Upon the reception of the returns of each election precinct by the county clerk, directed to him as hereinbefore provided, and within six days of the closing of the polls, he, together with two disinterested householders of the county, to be chosen by him, shall open said returns and make complete abstracts of the votes cast for each several office at said election.

Shall make abstract, declare who is elected, and issue certificates.

SEC. 19. After such abstract is made and the votes counted and compared, the person or persons having the highest number of votes for each of the offices of member of the council, member of the house of representatives, and all county and precinct officers voted for at such election, shall be declared duly elected, and the county clerk shall issue a certificate accordingly.

Abstracts of votes for delegate in Congress,

SEC. 20. The county clerks of the several counties of this territory shall, within the time prescribed in section eighteen of this chapter, make further abstracts of the and territorial officers. votes cast at any election for delegate to Congress, territorial auditor, territorial treasurer and territorial librarian, and transmit the same, by mail or otherwise, to the secretary of this territory.

Governor, secretary and auditor shall canvass votes for delegate, etc. SEC. 21. Within ten days after the reception of said abstracts, the said secretary shall, in the presence of, and with the concurrence of the governor and auditor of this territory, proceed to cast up the votes given in the several counties for delegate to Congress, territorial auditor, territorial treasurer and territorial librarian, and shall give to the person or persons having the highest number of votes certificates of election immediately thereafter.

If governor or auditor absent, who to act. SEC. 22. Should the governor or auditor be absent from the territory, or unable to serve, then the secretary shall call in the chief justice or one of the associate justices of this territory to fill such vacancy or vacancies.

Abstracts to be filed by secretary. SEC. 23. The said abstracts so transmitted to and received by the secretary, shall by him be placed on file in his office.

Vacancies by death, resignation or tie vote, how filled. SEC. 24. In case of a vacancy by a tie vote, death, resignation or otherwise, in the office of delegate to Congress, the governor shall issue his proclamation ordering a special election to fill such vacancy until the next general election of such delegate, giving at least forty days notice of the time of holding such special election; and the county commissioners of each county, upon the issuance of such proclamation by the governor, are required to post up in each election precinct of the county, at least eight days prior to such election, two written or printed notices of such special election. In case of a vacancy by a tie vote, death, resignation or otherwise, in the office of territorial auditor, territorial treasurer or territorial librarian, the governor shall, by appointment, fill such vacancy until the next annual election of said officers. In case of a vacancy by a tie vote, death, resignation or otherwise, in the office of member of the council or house of representatives, the county commissioners shall order a special election to fill such vacancy until the next general election, and give notice thereof as is directed in section three of this chapter. In case of a vacancy by a tie vote, death, resignation or otherwise, in a county or precinct office, except that of county commissioner, the board of county commissioners shall, by appointment, fill such vacancy until the next general election; and in case of such vacancy in the office of county commissioner, the county clerk, probate judge and prosecuting attorney, shall, by appointment, fill such vacancy until the next general election.

Returns in council or representative districts to be sent to county first named in law.

SEC. 25. When two or more counties are embraced in one council or representative district, the clerks of the several counties in said district shall, within seven days after the day of election, transmit by mail or otherwise to the clerk of the county first named in the law designating the district, correct abstracts of all the votes cast in the several counties composing such district, for councilman or representative, and the clerk of the county first named in the law designating the district, on the reception of such returns or abstracts, shall select two disinterested householders, and the three shall compare the votes given in the several counties as shown by the abstracts returned, and the said clerk shall make out and deliver to the person having the highest number of votes for the council or house of representatives, a certificate of election, which shall be delivered to the proper person, or his agent, when called for.

Who may contest elections—manner of conducting same.

SEC. 26. When any candidate or elector of any county, or council or representative district, chooses to contest the validity of an election, or the right of any person proclaimed duly elected to a seat in the council or house of representatives, such person shall give notice thereof, in writing, to the person whose election he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the election, expressing the points on which the same shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions. The notice herein required shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions, shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony is taken; and when all said testimony shall have been taken and reduced to writing, the said persons or person officiating at the taking of the same, shall certify all said testimony relative to such contested election to the presiding officer of the branch of the legislative assembly where the person whose seat is contested may be returned to serve, at its next session.

Same.

SEC. 27. The persons, or either of them, selected as aforesaid to hear and take depositions, shall have power, and are hereby authorized to issue subpœnas to all persons whose testimony may be required by either of the parties.

No person not an elector in a councilman district, can contest election, etc

SEC. 28. No person shall contest the election of any councilman or representative unless he is an elector of that county or district from which the person is returned to serve; and no testimony shall be received by the persons or person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the persons or person so officiating, and by them or him transmitted to the presiding officer of that branch of the legislative assembly where the contest is to be decided, with the other documents.

Who may contest election of territorial officers.

SEC. 29. Whenever any elector of this territory chooses to contest the validity of an election, or the right of any person proclaimed duly elected to the office of territorial auditor, territorial treasurer or territorial librarian, he shall proceed in like manner in giving notice and taking testimony as is provided in case of contest relative to member of legislative assembly, and said testimony, when taken, shall be certified by the persons before whom the same is taken, with a copy of the notice, to the secretary of the territory, who, with the governor and United States attorney of the territory, shall open and examine the same, and their decision upon the matter shall be final.

Contest as

SEC. 30. Whenever any candidate or elector chooses to contest the validity of an election, or the right of any person proclaimed duly elected to any county office, such person shall give the like notice required in the preceding section of this chapter, and shall choose one justice of the peace, on his part, and the adverse party shall choose one other justice, and the two justices thus chosen shall choose a third justice of the peace, and the said three justices thus chosen shall constitute a board to try the matter; said justices, or either of them, shall have power, and are hereby authorized, to issue subpœnas to all witnesses whose testimony may be required by either party, but the evidence shall be reduced to writing. Said justices may adjourn from day to day, until all the witnesses are heard, and they shall then make their decision thereon: *Provided, however*, That if the adverse party shall not choose a justice of the peace as herein provided, then, and in that case, the justice of the peace chosen by the contestant, shall proceed to hear and determine the matter in manner aforesaid: *Provided, however*, That either party feeling aggrieved at the decision of the said justices of the peace, or justice of the peace, shall have the right to appeal to the district court, under the same rules and regulations as are provided for appeals from courts of justices of the peace to the district court. to county officers.

SEC. 31. All costs accruing in any contested election shall be paid by the unsuccessful party, to be recovered by the proper civil action. Unsuccessful party to pay costs.

SEC. 32. All territorial, county and precinct officers shall qualify and enter upon the duties of their respective offices on or before the first Monday of December next succeeding their election. When officers shall qualify

SEC. 33. Every free white male citizen of the United States, and he who has, in accordance with the laws of the United States, filed his declaration of intention to become such, and who has attained the age of twenty-one years, and shall have been an actual resident of this territory for six months, of the county twenty days, and of the precinct or ward where he intends to vote ten days next preceding the election, shall be entitled to vote at any election in this territory: *Provided*, That no person who has aided or Qualification of voters. Residence defined.

abetted in the rebellion, or borne arms against the government of the United States, shall be entitled to exercise the right of the elective franchise, or hold office in this territory, unless such person shall have received a full and complete pardon from the president of the United States; and the judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as the same may be applicable:

First. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

Second. A person shall not be considered or held to have lost his residence, who shall leave his home and go into another territory or state, or county of this territory, for temporary purposes merely, with the intention of returning.

Third. A person shall not be considered and held to have gained a residence in any county of this territory into which he shall have come for temporary purposes merely, without the intention of making it his residence.

Fourth. If a person remove to another territory or state, intending to make it his permanent residence, he shall be considered and held to have lost his residence in this territory.

Fifth. If a person remove to another territory or state, intending to remain there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this territory, notwithstanding he may intend to return at some future period.

Sixth. The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise.

Seventh. If a married man have his family fixed in one place, and he does his business in another, the former shall be considered and held to be the place of his residence.

Eighth. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing, nor shall the fact of removal, without intention.

Ninth. If a person shall go into another territory or state, and while there shall exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this territory.

Elector to deliver ballot to judge of election.

SEC. 34. Each elector shall, in full view of the people assembled at the polls where he offers to vote, deliver in person to one of the judges of election, a single ballot, or piece of paper on which shall be written or printed the names of the persons voted for, with a pertinent description of the office which he or they may be intended to fill.

Penalty for voting in wrong ward or precinct.

SEC. 35. Any person who shall willfully vote in any precinct or ward in which he has not actually resided for ten days next preceding the election, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county not less than one month nor more than six months.

Same, as to wrong county.

SEC. 36. Any person being a resident of this territory, who shall go into any county and vote therein, not being a resident of such county, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and be imprisoned in the county jail not less than five days nor more than fifteen days.

If a resident of another state.

Penalty.

SEC. 37. Any resident of another territory or state, who shall vote in this territory, shall, on conviction thereof, be fined in any sum not less than one hundred dollars, or be imprisoned in the county jail for a period of not less than one year nor more than three years, and put to hard labor on the public highways in the county where said offense was committed, or both such fine, imprisonment and labor, at the discretion of the court.

Penalty in case of voting when not six months in territory, or of full age.

SEC. 38. Any person who shall vote in this territory, who has not been a resident thereof six months immediately preceding the election, or who, at the time of the election, is not twenty-one years of age, he knowing the same, or who is not a citizen of the United States, or declared his intention to become such, as provided by law, he knowing the same, shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than six months nor more than three years.

Penalty for aiding in illegal voting.

SEC. 39. Any person who shall procure, aid, counsel or advise another to give his vote, knowing that such other person has not been a resident of this territory six months immediately preceding the election, or at the time of the election is not twenty-one years of age, or that he has not declared his intention to become a citizen of the United States, as provided by law, or that he is not duly qualified from other disability to vote at the place where and the time when the vote is to be given, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

Same.

SEC. 40. Any person who shall procure, aid, assist or advise another to go into any county for the purpose of giving his vote therein, knowing that such other person is not qualified to vote in such county, shall, on conviction thereof, be fined in a sum not exceeding four hundred dollars.

Penalty in case of bribing any elector.

SEC. 41. If any person shall attempt by bribery to influence any elector of the territory in giving his vote or ballot, or shall use any threat to procure any elector to vote contrary to his own inclinations, or to deter him from giving his vote or ballot, such person shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, nor less than three hundred dollars, and be imprisoned in the county jail of the proper county not less than one month nor more than six months.

Deceiving a voter, penalty.

SEC. 42. Any person who shall furnish an elector who cannot read, with a ticket, informing him that it contains a name or names different from those which are written or printed thereon, with an intention to induce him to vote contrary to his inclinations, or who shall fraudulently or deceitfully change the ballot of any elector, by reason of which such elector shall be prevented from voting for such candidate or candidates as he intended, shall, on conviction thereof, be imprisoned in the county jail not less than one year nor more than three years, and put to hard labor on the public highways in the county where said offense was committed.

SEC. 43. If any person offering to vote is challenged by one of the judges of the election or by any elector, one of the judges shall tender to him the following oath or affirmation:

In case of challenge, the person must be sworn.

You do swear (*or* affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualifications as an elector at this election.

SEC. 44. If the person be challenged on the ground that he has not made his declaration of intention to become a citizen of the United States, the judges, or one of them, shall put the following question:

If on the ground that he is not a citizen, form of oath.

"Have you made your declaration of intention to become a citizen of the United States?"

If the person be challenged on the ground that he has not resided in this territory for six months immediately preceding the election, the judges, or any one of them, shall put the following questions:

As to residence, form of oath.

First. "Have you resided in this territory for six months immediately preceding this election?"

Second. "Have you been absent from this territory within the six months immediately preceding this election?" If he answers yes, then

Third. "When you left did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?"

Fourth. "Did you, while absent, look upon and regard this territory as your home?"

Fifth. "Did you, while absent, vote in any other territory or state?"

If the person be challenged on the ground that he is not a resident of the county, precinct or ward where he offers to vote, the judges, or one of them, shall put the following questions:

First. "Have you resided in this county for twenty days last past?"

Second. "Have you resided in this precinct (or ward) for the last ten days?"

Third. "When did you last come into this county?"

Fourth. "When you came into this county, was it for temporary purposes merely, or for the purpose of making it your home?"

Fifth. "Did you come into this county for the purpose of voting therein?"

Sixth. "Are you now an actual resident of this precinct or ward?"

If as to age, orm of oath.

If the person be challenged on the ground that he is not twenty-one years of age, the following question shall be put:

"Are you twenty-one years of age, to the best of your knowledge and belief?"

The judges of election, or one of them, shall put all such other questions to the person challenged under the respective provisions of this chapter, as may be necessary to test his qualifications as an elector at that election.

Voting more than once, penalty.

SEC. 45. Any person who shall vote more than once at the same election, shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than one year nor more than five years, or be fined in any sum not less than one hundred dollars, and imprisoned in the county jail for a period of not less than one year nor more than three years, and put to hard labor on the public highways in the county where said offense was committed.

If person refuse to swear, his vote shall be rejected.

SEC. 46. If any person shall refuse to take the oath or affirmation provided for in this chapter, his vote shall be rejected.

If challenge be not withdrawn, final oath.

SEC. 47. If a person's vote be challenged, and such challenge be not withdrawn after he shall have answered the foregoing questions, or such of them as may be necessary, the judges of election, or one of them, shall tender to him the following oath:

> "You do solemnly swear, that you are a citizen of the United States (*or* have declared your intention to become such), that you have been an inhabitant of the Territory of Nebraska for the last six months, and of the county of ——— for the last twenty days, and of this precinct for the last ten days; that you have attained the age of twenty-one years, to the best of your knowledge or belief; and that you will support the constitution of the United States and the organic act of this Territory.

Fraudulently putting ballot in box, penalty.

SEC. 48. Any person who shall, after the opening of the polls, fraudulently put a ballot or ballots, or ticket or tickets, into the ballot box, shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than one year nor more than three years.

Clerks to write "sworn" after the name of all who have been sworn.

SEC. 49. When any person's vote shall be received after having taken the oath prescribed in the forty-third section of this chapter, it shall be the duty of the clerks of the election to write on the poll-book at the end of the name of such person the word "sworn."

Penalty against judge for inserting fraudulent ballots.

SEC. 50. Any judge of the election who shall, after the opening of the polls, put a ballot or ticket into the ballot box, except his own, or such as may be received in the regular discharge of his duty, shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than two years nor more than five years.

Penalty for false swearing under this chapter.

SEC. 51. If any person challenged, shall be guilty of willful and corrupt false swearing, or affirming, in taking any oath or affirmation prescribed by this chapter, such person shall be adjudged guilty of willful and corrupt perjury, and upon conviction thereof, shall suffer the punishment attached by the laws of this territory to the crime of perjury.

Penalty against judges for receiving fraudulent votes.

SEC. 52. If any judge of the election shall knowingly receive or sanction the reception of a vote from any person not having all the qualifications of an elector prescribed by this chapter, or shall receive or sanction the reception of a ballot from any person who shall refuse to answer any question which shall be put to him in accordance with the provisions of this chapter, or shall refuse, or sanction the refusal, by any other judge of the board to which he shall belong, to administer either of the oaths or affirmations prescribed by this chapter, or if any judge or clerk of election, on whom any duty is enjoined by this chapter, shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the execution of the same, such judge or clerk, on conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not less than one year nor more than five years.

Persons convicted of bribery, etc., under this chapter, to be incompetent to vote thereafter, unless, etc.

SEC. 53. Every person who shall be convicted and sentenced to be punished by imprisonment, or sentenced to the county jail and hard labor, as herein provided for any offense specified in this chapter, or who shall be convicted of, and sentenced for bribery, under the provisions of this chapter, shall be deemed forever after incompetent to be an elector, or to hold any office of honor, trust or profit within this territory, unless such convict shall receive from the governor of this territory a general pardon, under his hand and the seal of this territory, in which case said convict shall be restored to all his civil rights and privileges. No person who shall have been, or who shall hereafter be, convicted of felony or other infamous crime, in any court of justice in the United States, punishable by imprisonment in the penitentiary or state prison of any state or territory of the United States, or of the United States, shall be eligible to, and is hereby forever prohibited and disqualified from holding any public office of honor, trust or emolument, either by appointment or the suffrages of the people, within this territory; and any person so as aforesaid convicted, is hereby disqualified from exercising the rights of the elective franchise at any election held in this territory.

A *bona fide* removal from one precinct or ward in same county or city to be no disqualification of the head of a family.

SEC. 54. Nothing contained in this chapter, so far as the same relates to the length of time required of the voter to reside in the precinct or ward where he offers to vote, shall be held, taken or construed to apply to any voter who is the head of a family, who shall, *bona fide*, remove with his family from one ward to another within the corporate limits of any town or city in this territory, or who shall remove from one precinct to another within the same county.

Prosecutions to be by indictment.

SEC. 55. All prosecutions under the provisions of this chapter, shall be by indictment before the district court of the proper county, and shall be governed in all respects by the laws in force in this territory, regulating prosecutions in that court for offenses of like punishment at the time such prosecution is commenced.

Fines to be paid into the school fund.

SEC. 56. All fines imposed under the provisions of this chapter shall, when collected, be paid into the county treasury, for the benefit of the common schools of the county in which such fines are collected; and the county treasurer shall apportion said funds among the different school districts of said county, in proportion to the number of scholars residing therein.

County commissioners to have control of all persons convicted under this chapter, etc.

SEC. 57. The control of any person convicted and sentenced under the provisions of this chapter, shall be subject to the general supervision and direction of the county commissioners of the county in which such conviction shall be had, or a majority of them, who may designate the place where the person so sentenced shall work, and under whose custody such convict shall be while so at work.

CHAPTER XVIII.

ESTRAYS.

When and how stock shall be taken up.

SECTION 1. It shall be lawful for any person holding land in this territory by deed, title bond, or lease, for one or more years, and being in possession thereof, to take up any estray horse, mule or ass, neat cattle, sheep or swine found within his enclosed premises at any season of the year; and any estray found around the premises of any lessee or freeholder between the 20th day of October and the 1st day of April, may be taken up by such lessee or freeholder; and any horse, mule or ass, with any portion of harness attached to them, and any oxen, with yoke, that are believed to have strayed away from their owners, may be taken up by any person at any time.

Description to be recorded and published.

SEC. 2. It shall be the duty of any person taking up an estray to send a description of the same to the county clerk within ten days after taking it up, and the county clerk shall immediately record the same in a book kept for that purpose, for which he shall receive the sum of twenty-five cents. The person taking up the estray shall, within twenty days thereafter, procure the publication of the description of such animal in any newspaper published within the county.

Price for advertising description.

SEC. 3. The proprietor of such newspaper shall publish said description for at least five consecutive weeks, and shall receive therefor the sum of three dollars: *Provided*, That if two or more estrays of the same species shall be taken up by the same person at the same time, they shall be included in the same publication; and in such case the aforesaid publisher shall receive no more than for one of such species, except, where the number so described shall exceed three, he shall receive one dollar for each estray beyond that number included in such publication.

May reclaim estrays.

SEC. 4. The owner of an estray may, at any time previous to its sale, reclaim the same on proving said property by oath or otherwise, and paying for the advertisement, and a reasonable compensation for any other necessary expenses incurred by the person taking up said estray.

Expenses.

SEC. 5. In case the parties cannot agree upon the amount of the expenses incurred, they may each choose a disinterested person to act as arbitrators, and the two chosen may chose a third. The decision of the arbitrators shall be final.

Several provisions as to the time and manner of taking up, advertising and disposing of the different kinds of stock.

SEC. 6. When an estray, if it be a sheep, swine or calf, under the age of one year, has not been reclaimed within six months after the advertising the same, it shall become the property of the person taking it up without further proceedings. If the estray be a horse, mule, ass, bull, cow or steer, over the age of two years, it must be reclaimed within six months from the time it was first advertised. If the estray is an animal over the age of one year, and not over the age of two years, it must be reclaimed within six months from the time it was first advertised. If any estray included in the last two named classes shall not be reclaimed within the time specified respectively, the person taking up the estray shall notify a justice of the peace of the county wherein said estray was taken up, who shall appoint two disinterested persons, and administer to them an oath or affirmation to faithfully and truly appraise said estray, and said persons, upon actual view of said property, shall appraise the same at its true value, and make due return thereof, in writing, to said justice of the peace, who shall appoint a day of sale, and cause notice of the time and place of sale to be published at least five weeks consecutively before the day of sale, in a newspaper printed in said county, and by posting up written or printed notices in three public places in the precinct where the estray is to be sold; and in case there is no newspaper printed in said county, there shall be three additional written or printed notices posted up at the county seat of said county, and on the day appointed said estray shall be sold by said justice to the highest bidder in cash; and the proceeds thereof, after deducting the costs of the proceedings and the expenses of keeping said estray, shall be paid to the county treasurer within ten days after the sale, subject to the order of the owner, provided the owner of said estray shall establish his ownership to the same, to the satisfaction of the county treasurer of said county, within one year from the day of sale, and if said balance is not so claimed within the time so specified, it shall be placed by said treasurer to the credit of the general school fund of said county.

SEC. 7. The place of sale shall be at the residence of the person taking up the estray. **Place of sale.**

SEC. 8. When an estray is sold, it must bring at least two-thirds of the appraised value. In case it does not, the animal shall be reappraised, and again offered for sale one week after the day appointed for the first sale, and no advertisement shall be necessary for the second sale. **How sold.**

SEC. 9. When the appraisers think the animal will not bring more than enough to defray the necessary expenses of the sale and advertisement thereof, said sale shall be dispensed with, and the person who took up the animal shall, on payment of expenses, be the owner thereof. **Taker-up may become the owner.**

SEC. 10. The money received from the sale of an estray shall go into the county school fund, all expenses first being paid. **Disposition of proceeds of sale.**

SEC. 11. Any person violating section ten of this chapter shall be liable to a fine of not less than twenty dollars nor more than two hundred dollars. **Penalty for violation of section ten.**

SEC. 12. The appraisers of estrays shall estimate the value of the labor, trouble and expense of the person in **Appraisers.**

taking up and keeping an estray—taking into consideration the services rendered by the animal.

Fees of same.

SEC. 13. The appraisers of estrays shall receive fifty cents each for each appraisement, but when more than one animal is taken up at any one time by one person, they shall all be appraised as one, and the appraisers shall be entitled to compensation for but one appraisement. The justice of the peace shall receive for his services the sum of one dollar and fifty cents.

Taker-up to pay charges.

SEC. 14. The advertisement, the appraisement, and the services of the justice of the peace, shall be paid by the person taking up the estray, and he shall receive the same, with fifty per cent. additional, from the proceeds of the sale of the estray.

Horses and mules may be gelded.

SEC. 15. If any horse or mule not gelded, two years old or upwards, shall be found running at large, it shall be lawful for any person to take up such horse or mule, and forthwith give notice to the owner or keeper, if he be known to the taker-up, and if the owner or keeper do not appear within three days thereafter and pay to the said taker-up two dollars as compensation for his trouble, the taker-up shall proceed to advertise said horse or mule, and the same proceedings shall be had in every respect as hereinbefore provided in cases of estray horses or mules: *Provided*, That the taker-up may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse or mule, which shall be done at the risk and expense of the owner.

SEC. 16. Should any animal taken up as an estray die while in possession of the person taking it up, he shall not be liable for the loss unless its death was the result of mistreatment or willful neglect.

CHAPTER XIX.

FEES.

SECTION 1. The salaries and fees of the several officers hereinafter named shall be as follows:

Fees of various officers named.

CLERK OF THE SUPREME COURT.

SEC. 2. Docketing each cause, civil or criminal, to be charged in each case but once, seventy-five cents.

Fees of clerk of supreme court.

Issuing summons in error, writ of error, certiorari, writ of injunction or mandate, one dollar.

Dismissal, discontinuance or continuance, twenty-five cents.

Entering each cause on the bar and court calendar, fifteen cents.

Issuing and docketing execution or order of sale, one dollar.

Taking affidavit, twenty-five cents.

Filing motion, rule, affidavit or other paper, ten cents.

Issuing attachment, and filing motion therefor, seventy-five cents.

Indexing each cause, direct and reverse, each docket, ten cents.

Entering judgment, decree or order on the journal, twenty-five cents.

For each ten words after the first one hundred words, one cent.

Entering minute of judgment, decree or order, on the appearance docket, fifteen cents.

Making copy of process, pleadings, record, or other paper, or any part thereof, for each ten words, one cent.

Entering satisfaction, twenty-five cents.

Certificate and seal, fifty cents.

Every search, where no other services are rendered to which any fee or fees are attached, fifteen cents.

CLERK OF THE DISTRICT COURT.

SEC. 3. Docketing each cause, seventy-five cents.

Fees of

clerk of district court.

Issuing summons, order of arrest, order of attachment, order of replevin, citation, or any mesne process, and filing return, fifty cents.

Entering voluntary appearance of defendant, twenty-five cents.

Taking bail bond, twenty-five cents.

Filing petition, pleading, indictment, or any other paper, ten cents.

Issuing attachment and filing motion therefor, seventy-five cents.

Entering return of any writ or order, other than of execution, order of sale, or of attachment, twenty cents.

Entering each cause on the bar and court calendar of each term of the court, fifteen cents.

Indexing each cause, direct and reverse, each docket, ten cents.

Drawing petit jurors, and issuing venire therefor, fifty cents.

Attending to the striking of special jury and issuing venire, one dollar.

Impanneling jury and administering oath, twenty-five cents.

Certifying to the county commissioners at the end of each term, the names of grand and petit jurors, and their terms of service and mileage, to be paid by the county, one dollar and fifty cents.

Issuing subpœna, and seal, twenty-five cents.

Swearing and entering appearance of each witness, fifteen cents.

Entering judgment on the journal, twenty-five cents.

For each ten words after the first one hundred words, one cent.

Entering verdict on the journal, twenty-five cents.

Transcribing judgment or order on appearance docket, twenty cents.

Drawing and issuing venire for grand jury, and impanneling the same, to be paid by the county, one dollar and twenty-five cents.

Dismissal, discontinuance or continuance, twenty-five cents.

Taxing costs, each cause, thirty-three cents.

Making complete record, for each ten words, one cent.

Copy of process, pleadings, record or paper filed, or any part thereof, for every ten words, one cent.

Certificate and seal, twenty-five cents.

Filing and entering petition for habeas corpus, twenty-five cents.

Issuing writ of habeas corpus, one dollar.

Issuing and docketing execution or order of sale, seventy-five cents.

Entering return of execution, order of sale or order of attachment, for each ten words, one cent.

Indexing execution or order of sale, direct and reverse, each docket, ten cents.

Taking acknowledgment of deed or other instrument, fifty cents.

Taking affidavit, except those required to pleading, forty-five cents.

Each certificate or seal not herein provided for, twenty-five cents.

Entering satisfaction of judgment, twenty-five cents.

Every search made by the clerk, where no other service is rendered to which any fee or fees are attached, fifteen cents.

Entering mandate and proceedings of supreme court, twenty five cents.

Entering transcript of judgment of justice of the peace, forty cents.

Entering and docketing appeal from judgment of justice of the peace, forty cents.

Suggesting death of party or diminution of record, fifteen cents.

Substituting party on record, fifteen cents.

Commission to examine witnesses, fifty cents.

Entering confirmation of sale, twenty-five cents.

Recording declaration of intention to become a citizen of the United States, and certified copy thereof under seal, fifty cents.

Recording final admission of alien to the right of citizenship, and certified copy thereof under seal, fifty cents.

Filing and entering motion, rule or default, ten cents.

Taking recognizance or entering forfeiture of recognizance, twenty-five cents.

Arraignment of defendant, twenty-five cents.

Entering retraction of plea or nolle prosequi, twenty cents.

Issuing capias, warrants, or other process under seal in criminal cause, fifty cents.

Entering remittitur, fifteen cents.

Clerk of district and supreme court to enter fees on docket.

Statement of fees to have force of execution

The clerk of the district and supreme court shall keep a docket in which he shall enter the costs chargeable and taxable against each party in any suit pending in said courts respectively; and he is hereby empowered, at any time, to make out a statement of such fees, specifying each item of the fees so charged and taxed, under the seal of the court, which fee bill, so made under the seal of said court, shall have the same force and effect as an execution; and the sheriff to whom said fee bill shall be issued, shall execute the same as an execution, and shall have the same fees therefor; and the clerk shall have the same fees for issuing such bill that he is entitled to for the issuance of an execution: *Provided*, That the clerk shall not enter in such docket any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

REGISTER IN CHANCERY.

Fees of register in chancery.

SEC. 4. Docketing each cause, seventy-five cents.

Taking affidavit, except those required to pleading, twenty-five cents.

Issuing subpœna in chancery, order of injunction, citation or any mesne process under seal, fifty cents.

Filing bill, pleading or other paper, ten cents.

Approving bail bond, twenty-five cents.

Entering return on subpœna, injunction, citation, or any mesne process, twenty-five cents.

Entering each cause on the bar and court calendar, each term, ten cents.

Indexing each cause, direct and reverse, each docket, ten cents.

Entering decree, fifty cents, and order on the journal, twenty-five cents.

And for each ten words after the first one hundred words, one cent.

Transcribing decree or order on appearance docket, ten cents.

Dismissal, discontinuance or continuance, twenty-five cents.

Taxing costs, each cause, forty cents.

For making complete record, transcript or copy of process, pleadings, record or other paper filed, or any part thereof, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Entering allowance of injunction, fifty cents.

Issuing execution or order of sale, seventy-five cents.

Entering return of execution or order of sale, for each ten words, one cent.

Entering satisfaction of decree, twenty-five cents.

Filing and entering notice of appeal, fifteen cents.

Filing and entering motion or rule, fifteen cents.

Every search, where no other service is rendered to which any fee or fees are attached, fifteen cents.

SHERIFFS.

SEC. 5. Serving capias, with commitment or bail bond, and return, one dollar.

Fees of sheriffs.

For each search on search warrant, one dollar.

Arresting under search warrant, each defendant, one dollar.

Serving summons, subpœna in chancery, order of attachment, order of replevin, writ of injunction, scire facias, citation, or other writ of mesne process, and return thereof, sixty cents.

Each defendant besides the first, twenty-five cents.

Copy of summons, subpœna in chancery, order of attachment, twenty-five cents.

Copy of writ of injunction, or scire facias, each ten words, one cent.

Serving subpœna for witness, each person, twenty-five cents.

Taking and filing replevin bond or other indemnification, to be furnished and approved by the sheriff, fifty cents.

Making copy of any process or bond or paper, other than herein provided for, for every ten words, one cent.

Traveling expenses, for each mile actually and necessarily traveled, five cents.

Levying writ of execution and return thereof, one dollar.

Levying writ of possession, with the aid of the county, three dollars and fifty cents.

Levying writ of possession, without the aid of the county, two dollars.

Summoning grand jury, including mileage, to be paid by the county, eight dollars.

Summoning petit jury, including mileage, to be paid by the county, six dollars.

Summoning special jury, for each person impanneled, thirty cents.

Calling jury for trial of cause, twenty-five cents.

Serving notice of motion, or other notice or order of court, fifty cents.

Executing writ of habeas corpus, and return, one dollar and twenty-five cents.

Serving writ of restitution, and return, one dollar and twenty-five cents.

Calling inquest to appraise lands and tenements levied on by execution, sixty cents.

Calling inquest to appraise goods and chattels taken by order of attachment or replevin, sixty cents.

Advertisement of sale in newspaper, in addition to the price of printing, sixty cents.

Advertising in writing for sale of real or personal property, one dollar.

Executing writ or order of partition, two dollars.

Making deed for lands sold on execution, or order of sale, in addition to the cost of revenue stamp, two dollars.

Committing prisoner to prison, or discharging therefrom, twenty-five cents.

Attending before judge or court, in criminal cases, one dollar.

Opening court and attending thereon, per day, to be paid by the county, one dollar and fifty cents.

Commission on all money received and disbursed by him on execution or order of sale, order of attachment, decree, or on sale of real or personal property, shall be, for each dollar not exceeding four hundred dollars, three cents.

For every dollar above four hundred dollars and not exceeding one thousand dollars, two cents.

For every dollar above one thousand dollars, one cent.

For boarding prisoner, per day, not exceeding seventy-five cents.

For executing death warrant, such fee as the county commissioners shall deem reasonable and just, to be paid by the county.

In all cases where personal property shall be taken by the sheriff in execution, or on an order of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value of the same, as in case of sale.

Fees of sheriffs in probate and justice's courts.

SEC. 6. The sheriffs of the several counties of this territory, for performing the duties required by law to be performed by them in the probate or justice court, shall receive the same fees as are allowed for similar service in the district court, to be taxed against the proper party or parties by the probate judge or justice.

CORONER.

Fees of coroner.

SEC. 7. For viewing a dead body, ten dollars.

Summoning and qualifying an inquest, fifty cents.

Drawing and returning inquisition, for each ten words, one cent.

For physician making *post mortem* examination of dead body, not to exceed in any case, ten dollars.

To be paid out of any goods, chattels, lands and tenements of the slayer (in case of murder or manslaughter,) if he hath any, otherwise by the county, with mileage or distance actually traveled to and from the place of viewing the dead body. For all other services rendered, the same fees as are allowed the sheriff, and mileage.

PROBATE JUDGE.

Fees of probate judge.

SEC. 8. Docketing each cause, twenty-five cents.

Entering appearance of parties, fifteen cents.

Taking affidavit, twenty-five cents.

Issuing summons or other writ under seal, fifty cents.

Filing petition, answer or any other pleading or paper necessary in any cause, except the accounts current and vouchers of executors, administrators or guardians, five cents.

Probate of will, and entry thereof, two dollars.

Letters testamentary or of administration or guardianship, under seal, and recording the same, two dollars.

Taking and approving bond, twenty-five cents.

Recording bond, will, sale bill, settlement of executor, administrator or guardian, for every ten words, one cent.

For copy of bond, will, sale bill, inventory, settlement, pleading, decree, record, or other document or paper, for every ten words, one cent.

Filing an account and vouchers of executor, administrator or guardian, for settlement, and entering the same on minutes of the court, fifty cents.

Examining a partial or final settlement of executor, administrator or guardian, when the vouchers do not exceed fifty, one dollar.

Every additional voucher, over fifty, two cents.

Issuing citation, fifty cents.

Giving notice of time of settlement, twenty-five cents.

Issuing marriage license, and administering oath when necessary therein, one dollar and twenty-five cents.

Hearing and deciding applications in contested cases on petition to sell land, two dollars.

Entering judgment, fifty cents.

Issuing execution or order of sale, fifty cents.

Making appointment of, and issuing commission to commissioners or appraisers, fifty cents.

Filing and recording report of commissioners, or of the proceedings and judgment of the district court on appeal from the decision of commissioners, fifty cents.

For every additional ten words after the first hundred words, one cent.

Making and recording order or decree, for every ten words, one cent.

Recording report of commissioners to make partition, for the first hundred words, seventy-five cents.

For every ten words after the first hundred, one cent.

For making copy of same, for every ten words, one cent.

Certificate and seal, twenty-five cents.

Filing and entering motion, fifteen cents.

Issuing subpœna and seal, fifty cents.

Each name therein after the first, five cents.

Every search when made by probate judge where no service is rendered to which any fee or fees are attached, fifteen cents.

The price of printing notices required by law to be printed in some newspaper, shall be allowed in addition to the fees herein allowed.

Fees of probate judge acting as justice.

SEC. 9. For any service performed by the probate judge in any matter within the jurisdiction of justices of the peace, he shall be allowed the same fees as are allowed by law to justices of the peace for like services, and no more.

MASTER IN CHANCERY.

Fees of master in chancery.

SEC. 10. For copying any paper or instrument of writing, for taking testimony, for every ten words, one cent.

Swearing each witness, ten cents.

Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.

And such additional fee as the court shall allow, not exceeding in any one cause, the sum of ten dollars.

Certificate and seal, twenty-five cents.

Taking affidavit, twenty-five cents.

Advertisement of sale of property in newspaper, in addition to the price of printing, sixty cents.

For making sale, one dollar.

Report of sale, one dollar.

Making deed for land sold on decree or order of sale, in addition to price of revenue stamp, two dollars.

Commission on the amount of purchase money received and disbursed by him of all the property contained in each decree or order of sale, shall be, for each dollar not exceeding three hundred dollars, two cents.

For each dollar above three hundred and not exceeding one thousand dollars, one cent.

For every dollar above one thousand dollars, one-half cent.

In all cases in the district or supreme court, when persons in whose favor the execution or order of sale is issued, shall bid in the property sold on execution or decree, the sheriff or master making such sale, shall receive five dollars as his per cent. on such sale, and no more.

JUSTICE OF THE PEACE.

Fees of justice of peace.

SEC. 11. Docketing each cause, twenty-five cents.

Taking affidavit, twenty-five cents.

Filing petition, bill of particulars, or other paper necessary in a cause, ten cents.

Issuing summons, capias, subpœna, order of arrest, or venire for jury, fifty cents.

Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents.

Issuing writ of restitution, and entering return therein, one dollar.

Administering oath or affirmation to witness, ten cents.

Entering judgment in any cause, fifty cents.

Taking acknowledgment of deed or other instrument, fifty cents.

Swearing jury, twenty-five cents.

Copy of appeal, certiorari, or copy of pleadings or other papers for any purpose, for each ten words, one cent.

Taking depositions, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Issuing warrant or mittimus, one dollar.

Taking information or complaint, fifty cents.

Discharge to jailor, twenty-five cents.

Dismissal, discontinuance or satisfaction, twenty-five cents.

Written notice to party or parties, ten cents.

Filing notice and opening judgment for re-hearing, thirty cents.

Each adjournment, fifty cents.

Performing marriage ceremony, three dollars.

Each day's attendance upon trial of a cause, after the first day, one dollar.

Taking and approving bail bond, twenty-five cents.

Entering voluntary appearance of defendant, twenty-five cents.

Issuing attachment, fifty cents.

Entering motion or rule, ten cents.

Rule of reference to arbitrators, fifty cents.

Entering award of arbitrators, twenty-five cents.

Commission on money collected on judgment without execution, shall be one per cent. on the amount.

CONSTABLES.

SEC. 12. Constables shall be allowed the same fees as are allowed to sheriffs for like services. Fees of constables.

REGISTER OF DEEDS.

SEC. 13. For recording deed, mortgage, or other instrument, for the first two hundred words, seventy-five cents. Fees of register of deeds.

For each ten words thereafter, one cent.

Copy of record, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Making certified abstract of title, for the first deed or transfer, one dollar.

And for each additional deed or transfer, ten cents.

Entering satisfaction of mortgage or lien, twenty-five cents.

COUNTY CLERK.

SEC. 14. Issuing certificate of election, twenty-five cents. Fees of county clerk.

For performing the duties of clerk to the county commissioners, and attending to the business of the county, such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of four hundred dollars.

For each certificate and seal in other cases, twenty-five cents.

For recording each certificate of marriage, twenty-five cents.

JURORS.

Fees of jurors.

SEC. 15. For each day's attendance at any district court, as grand, petit or special juror, to be paid by the county, three dollars.

Traveling expenses for each mile actually traveled, the mileage to be circular and paid by the county, five cents.

COUNTY SURVEYORS.

Fees of county surveyors.

SEC. 16. For the first mile, or fractional part thereof, actually run with compass and chain, three dollars.

For each succeeding mile, or fractional part thereof, one dollar.

For each lot laid out and platted in any city or town, one dollar.

For each copy of plat and certificate, fifty cents.

Recording each survey, twenty-five cents.

For each mile actually and necessarily traveled in going to work, ten cents.

For establishing each corner, twenty-five cents.

For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars.

For surveying county roads, per day, four dollars.

Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

PRINTERS.

Fees of printers.

SEC. 17. For printing and publishing legal advertisement in newspapers, as follows:

Each square of one hundred words, for the first insertion, seventy-five cents.

Each subsequent insertion, for each square of one hundred words, forty cents.

Each legal advertisement under one hundred words, shall be deemed a square, and after the first hundred, twenty-five words or more, under one hundred words, shall be deemed a square.

For publishing lands, each description, ten cents.

For publishing delinquent town lots, each description, five cents.

SEC. 18. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day.

Compensation of interpreters.

NOTARIES PUBLIC.

SEC. 19. For each protest, one dollar and fifty cents.

Fees of notaries public.

For recording the same, fifty cents.

For taking affidavit and seal, twenty-five cents.

For administering oath or affirmation, ten cents.

For taking deposition, each ten words, two cents.

For each certificate and seal, twenty-five cents.

For taking acknowledgment of deed or other instrument, fifty cents.

COUNTY TREASURER.

SEC. 20. Each county treasurer shall receive for his services the following fees:

Fees of county treasurer.

On all moneys collected by him for each fiscal year, under three thousand dollars, ten per cent.

For all sums over three thousand dollars and under five thousand dollars, four per cent.

On all sums over five thousand dollars, two per cent.

On all sums collected, per centage shall be allowed but once; and in computing the amount collected, for the purpose of charging per centage, all sums, from whatever fund derived, shall be included together, except the school fund.

For going to the seat of government to settle with the territorial treasurer, and returning therefrom, a traveling fee of ten cents per mile, to be paid out of the territorial treasury.

For advertising and selling lands for delinquent tax, an additional fee of five per cent., to be collected only in case such lands are actually sold, and then in cash of the person buying the same; but for all other cases and services, the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, territorial or county warrants.

On school moneys by him collected, he shall receive a commission of but one per cent.

And in all cases where persons outside of the territory apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person.

ASSESSOR.

Fees of assessors.

SEC. 21. Each assessor shall receive for his services the following fees, and no more: for each and every day actually engaged, the sum of three dollars.

COUNTY COMMISSIONERS.

Fees of county commissioners.

SEC. 22. County commissioners shall each be allowed for the time they shall be necessarily employed in the duties of their office, the sum of three dollars per day, and five cents per mile, to be paid out of the general county fund; and it shall be their duty to furnish all the necessary blank books, blanks and stationery for clerks of the district court, county clerks, treasurer and probate judge of their respective counties, to be paid out of the county treasury.

WITNESSES.

Fees of witnesses.

SEC. 23. For each day's attendance before the district court in civil cases, seventy-five cents, and mileage.

In criminal cases, or before any other court, board or tribunal, fifty cents per day, and mileage: *Provided*, That in all criminal cases witnesses shall be paid out of the treasury of the proper county.

Jury and trial fees, by whom paid.

SEC. 24. There shall be paid by the party against whom a verdict is rendered, in the district court, a jury fee of five dollars, to be taxed in the bill of costs, and when collected to be paid into the county treasury; and for each trial by the court, a fee of one dollar, to be taxed, collected and paid in a like manner, for the use of the county.

Jury fee in criminal case.

SEC. 25. In each criminal case tried by a jury, upon a conviction of the defendant or defendants, there shall be taxed in the bill of costs, a fee of six dollars as a jury fee, and judgment therefor shall be rendered against such defendant or defendants, which sum, when collected, shall be paid into the county treasury, for the use of the county.

Costs, how taxed.

SEC. 26. In all actions, motions and proceedings in the supreme, district, probate or justices courts, the costs of the parties shall be taxed and entered on record separately.

SEC. 27. The clerks of the supreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds, may in all cases require the party for whom any service is to be rendered, to pay the fees in advance of the rendition of such service, or give security for the same, to be approved by the officer. Fees to be paid in advance in certain cases.

SEC. 28. It shall be lawful for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him, if required, and also a receipt or discharge signed by him for fees paid. Bill of particulars to be made out.

SEC. 29. No sheriff, coroner or constable shall be entitled to receive on mesne or final process, any fees provided for in this chapter, unless he shall return upon the process upon which any charge shall be made, the particular items of such charge. Items in the return.

SEC. 30. If any officer whatever, whose fees are hereinbefore expressed and limited, shall take greater fees than are so hereinbefore limited and expressed, for any service to be done by him in his office, or if any such officer shall charge or demand, and take any of the fees hereinbefore ascertained and limited, where the business for which such fees are chargeable shall not be actually done and performed, such officer shall forfeit and pay to the party injured, fifty dollars, to be recovered as debts of the same amount are recoverable by law. Penalty for taking illegal fees.

SEC. 31. All officers, whose fees are by this chapter determined, are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said offices; and if any such officer shall neglect to keep a table of fees of his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed. Tables of fees to be kept posted. Penalty for neglect.

SEC. 32. It shall be the duty of the district court, at Appointment and pay of bailiffs.

each term of court, to appoint a competent number of bailiffs to wait on the grand jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

Officers may demand price of revenue stamps.

SEC. 33. All officers whose fees are hereinbefore limited, and expenses are allowed, may charge and demand as hereinbefore allowed, the price of all United States revenue stamps required to be used in the discharge of their official duties, and the same shall be taxed with costs as in other cases of fees.

Compensation of prosecuting attorney.

Proviso.

SEC. 34. The prosecuting attorney in each county shall receive such compensation for his attendance upon the district court, and for his services, as shall be fixed by the order of the judge allowing the same: *Provided*, That in no instance shall there be allowed a greater sum than two hundred dollars for each term of the court, whether a regular or special term. And for preparing and examining official bonds, each, one dollar.

SEC. 35. Every officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in form following:

I, A. B., do solemnly swear (*or* affirm), that I have been ——— days necessarily and diligently engaged in the duties of my office as (*insert title of officer.*) (*Officer's name.*)
Attest by ———.

Any disbursing officer of this territory who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is subscribed, shall forfeit to this territory the sum of fifty dollars, which forfeiture may be sued for by any tax-payer.

CHAPTER XX.

FERRIES.

License to be obtained.

SECTION 1. No person shall be permitted to keep a ferry across any stream running through or bounding on any county in this territory, without having first obtained license from the board of county commissioners of the proper county for that purpose, as hereinafter provided.

Notice of application.

SEC. 2. The person applying for such license shall produce satisfactory evidence to the board of county commissioners, by the affidavit of the applicant or otherwise, of his having given notice by advertisement, set up in at least three public places in the precinct or neighborhood where the ferry is proposed to be kept, twenty days prior to the sitting of the board of commissioners, of his intention to apply to such board, at their next regular term, for license to keep such ferry.

County commissioners to grant license.

SEC. 3. The board of county commissioners being satisfied that the notice hereby required has been given, that a ferry is needed at said place, and that the applicant is a suitable person to keep the same, are hereby authorized to grant to the applicant a license to keep the same for the term of not less than one year nor more than ten years, on the applicant paying into the county treasury of the proper county, a sum to be fixed by the board of county commissioners, not less than two dollars nor more than five hundred dollars annually; and on the applicant producing the county treasurer's receipt for the sum so fixed, he or she shall receive from the clerk of the said board of county commissioners, a license, under the seal of said clerk, for which he or she shall pay the clerk the sum of fifty cents.

Conditions on which license granted.

Persons owning land on both sides of stream have exclusive right.

SEC. 4. The person owning or possessing land on both sides of any stream, when a ferry is proposed to be established, shall have exclusive right to a license for a ferry at such place, and when the opposite banks are owned by different persons, the right to the ferry shall be mutual; but if the owner does not apply to the board of commissioners, the board shall grant a license to any person applying for the same, except where either of the landings are not on a public highway, in which case the consent of the owner of the ground shall first be had in writing: *Provided*, That nothing herein contained shall be so construed as to prevent any person from ferrying persons across a small stream in high water; and the board of county commissioners are hereby authorized to direct the county clerk to give any person a permit for that purpose, when in their opinion the stream is too small to justify the expense of a license: *And provided, also*, When any person shall apply for a renewal of his license, at the same place where he kept a ferry the preceding year, the same may be granted or renewed without notice or petition.

County clerk to give permit.

Renewal of license.

SEC. 5. When a license shall expire in vacation, and the person who obtained the same shall procure a renewal, the latter license shall include the time from the expiration of the former, as well as the time to which it shall extend in future, and the applicant shall pay a rateable proportion for the whole time therein mentioned, and shall thereupon be exonerated from any penalty to which he would be otherwise liable: *Provided, however*, That in all applications for a license, the board of commissioners may grant or refuse the same at their discretion.

Ferryman to keep good and sufficient boat.

SEC. 6. Every person obtaining a license to keep a ferry, shall provide and keep in good repair a good and sufficient boat, for the safe conveyance of persons and property, and when the river or creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, give due attendance from daylight in the morning until dark in the evening; and shall, moreover, at any hour in the night or day that the creek or river can be passed, when called upon for that purpose, convey the United States mail or other public express across said ferry; and if any person having obtained a license as aforesaid, shall fail or neglect to perform the duties herein enjoined, or any of them, the person so offending shall forfeit and pay for every such offense, a sum not exceeding five dollars, to be recovered before any

Neglect to perform duties, penalty.

justice of the peace of the proper county, at the suit of any person prosecuting for and making due proof of such failure or neglect; and if any keeper of a ferry as aforesaid, shall demand and receive a higher rate or sum for ferriages than shall be allowed by the board of county commissioners of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offense, a fine not exceeding ten dollars, recoverable before any justice of the peace of the proper county, by any person making due proof thereof, to be disposed of as hereinafter provided.

How released from penalty.

SEC. 7. Should the county commissioners refuse to renew the license of any ferryman, he shall be exonerated from the penalties of this chapter, by paying into the county treasury, previous to any prosecution having been commenced against him, such sum for the time which may have elapsed between the expiration of his license and the next session of the board of county commissioners, as shall bear a rateable proportion to the amount charged for the previous year.

County commissioners to fix rate of ferriages.

SEC. 8. The board of county commissioners, at the same time they grant a license to keep a ferry shall also fix the rate of ferriages which the ferry keeper may demand and receive for the transportation of persons and property; and it shall be the duty of the clerk of the board of said county commissioners to furnish every person taking out a license to keep a ferry, with a list of the rate of ferriages, which list the ferry keeper shall post up at the door of his ferry house, or in some conspicuous place convenient to said ferry.

List to be posted.

County clerk to give list of persons holding licenses to grand jury.

SEC. 9. Every county clerk shall, on the first day of the term of the district court, deliver to the grand jury an accurate list of all persons holding license within his county; and it shall be the duty of the judge to give this chapter in charge to the grand jury, whose duty it shall be to make inquiry and give information of any violation thereof, except in cases where jurisdiction is given to justices of the peace.

Unauthorized ferries, penalty.

SEC. 10. If any person shall keep a ferry without being duly authorized, the person so offending shall forfeit and pay a sum not exceeding fifty dollars, to be recovered by indictment.

Neglect of officers, penalty.

SEC. 11. If any justice of the peace or other officer shall neglect or fail to comply with the requisitions of this chapter, the person so offending shall forfeit and pay for every such offense a sum not exceeding fifty dollars, at the discretion of any court of competent jurisdiction before whom the same may be recovered, for the use of the county.

Suits, how brought.

SEC. 12. All actions or suits brought under the provisions of this chapter, shall be in the name of the territory of Nebraska, and the court taking cognizance thereof shall keep a record of all fines and forfeitures recovered under the same; and sheriffs, constables and other officers shall pay all moneys, within thirty days after receiving the same, into the county treasury. Justices of the peace and clerks of courts, before whom any fine is recovered, shall present an accurate account thereof to the county clerk on or before the first Monday of July annually; and it shall be the duty of the county clerk to inform against and prosecute all offenders against this statute, especially such offenses as are cognizable before justices of the peace.

SEC. 13. Nothing herein contained shall be so construed as to conflict or interfere with any vested right heretofore acquired or secured under any law of this territory.

CHAPTER XXI.

GAME.

Protection of deer, elk, antelope or fawn.

SECTION 1. It shall be unlawful for any person in the territory of Nebraska, to kill, ensnare or trap any wild deer, elk, antelope or fawn, between the first day of January and the first day of September in each year. It shall also be unlawful for any person in said territory to kill, ensnare or trap any wild grouse, between the first day of April and the first day of August. Grouse.

SEC. 2. It shall be unlawful for any person to ensnare or trap wild turkey or quail at any season of the year, but the season for killing the same shall commence on the first day of September and end on the last day of January of each year. Wild turkeys and quails.

SEC. 3. It shall be unlawful for any person to buy or sell any kind of the above mentioned animals or birds which shall have been trapped or ensnared or killed within the times above mentioned. The having in possession any of the above mentioned animals or birds recently killed, by any person or persons, between said dates, shall be deemed and taken as *prima facie* evidence that the same were trapped, ensnared or killed by the person or persons having in possession the same, in violation of the provisions of this chapter. Unlawful to buy or sell. Evidence.

SEC. 4. Any person violating any of the provisions of this chapter shall forfeit and pay the sum of fifteen dollars for each deer, fawn or elk, ensnared, trapped or killed, bought, sold or held in possession; and three dollars for any bird of game above mentioned, thus killed, ensnared, trapped, bought or sold, or held in possession. Penalty for violating this chapter

SEC. 5. Any person who shall go upon any other person's premises or corporation, and shall be found hunting, trapping or ensnaring any of the above mentioned birds or animals, within the times prohibited by this chapter, shall be deemed guilty of trespass, and may be prosecuted by the person or persons owning said premises or corporation, before any justice of the peace of the county or other courts of competent jurisdiction, and fined in any sum not less than three dollars nor more than fifty dollars; to be paid, one moiety to the complainant, and one to the school fund commissioners of the county for the benefit of the schools of the said county: *Provided, however*, That a judgment against a person for a violation of the provisions of this chapter, under sections one, two, three and four of the same, shall be a bar to any suit under this section, for the same offense. Persons found hunting on other's premises, guilty of trespass.

SEC. 6. Prosecution may be brought by any person, How prosecuted.

in the name of the territory of Nebraska, against any person or persons violating the first, second, third and fourth sections of this chapter, before any justice of the peace of the county in which such violations are alleged to have taken place, or before any court of competent jurisdiction thereof, and any sum or sums so recovered shall be paid, one moiety to the complainant, and one to the school fund commissioners of the county for the benefit of the common schools in said county.

CHAPTER XXII.

GOVERNMENT.

Seat of government, where located.

SECTION 1. The seat of government of the territory of Nebraska is hereby located and established at Omaha, in the county of Douglass and territory of Nebraska.

CHAPTER XXIII.

GUARDIANS AND WARDS.

Who are minors.

SECTION 1. All male children under twenty-one, and all females under eighteen years of age, are declared to be minors; but in case a female marries between the age of sixteen and eighteen, her minority ends.

Guardians, how appointed.

SEC. 2. The court of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as shall reside without the territory, and have an estate within the same.

SEC. 3. If the minor is under the age of fourteen years, the court of probate may appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly.

When minor is under the age of fourteen.

SEC. 4. If the guardian nominated by such minor shall not be approved by the court, or if the minor shall reside out of the territory, or if, after being cited by the court, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

In case such guardian is not approved by the court, or the minor neglects to nominate.

SEC. 5. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the court, his nomination of a guardian may be certified to the court of probate by a justice of the peace, which shall have the same effect as if made in the presence of the court.

If minor resides more than than ten miles from place of holding court, his nomination may be certified by a justice.

SEC. 6. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and to care for his education.

When parents may be guardians.

SEC. 7. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

If minor is an orphan, the guardian shall have the custody, etc., of ward.

SEC. 8. Every guardian, appointed as aforesaid, shall have the care and management of the estate of the minor, and shall continue in office until such minor shall arrive at the age of twenty-one, if a male, or eighteen years if a female, or until the guardian shall be discharged according to law.

Guardian shall have care of minor's estate until his majority

SEC. 9. Every such guardian shall give bond, with surety or sureties, to the judge of probate, in such sum as the court shall order, with condition as follows:

Bond of guardian.

First. To make a true inventory of all the real and personal estate of the ward that shall come to his possession or knowledge, and to return the same into the court at such time as the law directs.

To make an inventory.

Faithfully to discharge his trust.

Second. To dispose of and manage all such estate and effects according to law, and for the best interests of the ward, and faithfully to discharge his trust as such guardian.

To render an account of property in his possession.

Third. To render an account on oath of the property in his hands, including the proceeds of all the real estate which may be sold by him, and of the management and disposition of such property, within one year after his appointment, and at such other times as the court shall direct.

To settle his accounts with the court, and deliver property to person entitled thereto.

Fourth. At the expiration of his trust, to settle his accounts with the court, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Minor with sufficient property shall defray expenses from his own estate.

SEC. 10. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the court, and the charges therefor may be allowed accordingly in the settlement of the accounts of such guardian.

Guardian may be appointed by will.

SEC. 11. Every father may, by his last will, in writing, appoint a guardian for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the court.

When shall give bond.

SEC. 12. Every such testamentary guardian shall give bond in like manner and with like condition as is hereinbefore required of a guardian appointed by the court: *Provided*, That when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the court shall think proper to require it.

Power of court to appoint guardians shall not be impaired.

SEC. 13. Nothing contained in this chapter shall impair or affect the power of any court to appoint guardians to defend the interests of minors, impleaded in such court, or interested in any matter then pending, nor their power to appoint or allow any person, as next friend for a minor, to commence, prosecute or defend any suit in his behalf.

When court shall appoint.

Notice.

SEC. 14. When the relations or friends of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally incompetent to have the charge and management of his property, shall apply to the court of probate to have a guardian appointed for him, the court shall cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the cause, not less than fourteen days before the time so appointed.

Guardian, when to be appointed.

SEC. 15. If, after a full hearing and examination, upon any such application, it shall appear to the court that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Duties.

Bond.

SEC. 16. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with the like conditions as is before prescribed with respect to the guardian of the minor.

When guardian may be appointed for spendthrift.

SEC. 17. When any person, by excessive drinking, or by gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen his estate as to expose himself or family to danger of want or suffering, or the county to charge or expense for the support of himself or family, any officer having charge of the poor of the county, or justice of the peace of the county of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the court of probate, setting forth the facts and circumstances in the case, and praying to have a guardian appointed for him.

Notice. SEC. 18. The court shall cause notice to be given to such supposed spendthrift of the time and place of hearing the case, not less than ten days before the time so appointed, and if, after a full hearing, it shall appear to the court that the person complained of comes within the provision contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Copy of complaint shall be recorded. SEC. 19. After the order for notice has been issued, the complainant may cause a copy of the complaint, with the order for such notice, to be filed in the office of the county clerk of the county, and a minute thereof to be entered on the lien book in said office; and if a guardian shall be appointed on such application, all contracts, except for necessaries at reasonable prices, and all gifts, sales, and transfers of real or personal estate, made by such spendthrift, after the filing of a copy of such complaint and order, as aforesaid, and before the termination of the guardianship, shall be utterly void. Contracts void.

Allowance to ward. SEC. 20. When a guardian shall be appointed for an insane person, or a spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward, in defending himself against the complaint.

Powers and duties of guardians. SEC. 21. Every guardian appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with like condition as is hereinbefore directed with respect to the guardian of an insane person. Bond.

How debts shall be paid. SEC. 22. Every guardian appointed under the provisions of this chapter, whether for a minor or for any other person, shall pay all just debts due from the ward out of his personal estate, and the income of his real estate, if sufficient; or if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.

Duties of guardian.

SEC. 23. Every such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts due him, or may, with the approbation of the court, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

Management of ward's estate.

SEC. 24. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profit thereof, as far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any, and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

Maintenance.

Partition and assignment of dower.

SEC. 25. The guardian may join in, and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law, and he may also assign and set out dower in the said estate, to any widow entitled thereto.

Oath.

SEC. 26. Every guardian appointed by virtue of this chapter, shall, before entering upon his duties, take and subscribe an oath that he will faithfully perform the duties of guardian to such ward, which oath shall be indorsed upon the inventory, and shall, within three months after his appointment, make out a true and perfect inventory of all the property of the ward, in this territory, which shall come to his knowledge or possession, and shall, within that time, cause the same to be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased person, and every guardian shall account for and dispose of the estate of the ward in like manner as is directed with respect to executors or administrators.

Inventory.

Appraisement.

Power of guardian to sell person's estate.

SEC. 27. The courts of probate, in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein, and the said court may make such further orders, and give such directions as the case may require, for managing, investing and disposing of the estate and effects in the hands of the guardian.

When guardians may be removed.

SEC. 28. When any guardian, appointed either by the testator or court of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the court, after notice to such guardian and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the court proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the court may appoint another in his place.

Court may appoint.

Neglect of duty.

SEC. 29. If any guardian, having the care and custody of such minor, shall neglect to well feed and clothe him or her, or in any way maltreat or abuse him or her, he shall, upon conviction thereof, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding sixty days, or both, at the discretion of the court.

How suit may be commenced.

SEC. 30. Suit may be commenced by any one against such person who shall have such minor in charge, by filing an information with the probate judge, or a justice of the peace in the county where said guardian resides, and the said judge of probate or justice of the peace shall issue a warrant directed to the sheriff or constable, who shall arrest and bring said guardian forthwith before him to answer such charge.

Removal and appointment.

SEC. 31. If upon testimony it shall appear to the satisfaction of the judge of probate that the person having in charge such minor is unfit for the trust, and that the condition of such minor would be ameliorated by the removal of such guardian, then said judge shall remove him, and appoint some other person to act as guardian.

Limitation of action on guardian's bond.

SEC. 32. No action shall be maintained against the sureties in any bond given by the guardian, unless it be commenced within four years from the time when the guardian shall have been discharged: *Provided*, That if at the time of such discharge the person entitled to bring such action shall be out of the territory, or under any legal disability to sue, the action may be commenced at any time within five years after the return of such person to the territory, or before such disability shall be removed.

Embezzlement of ward's property punished.

SEC. 33. Upon complaint made to the court by any guardian or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person, as having concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument in writing belonging to the ward, the court may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Non-resident minor.

SEC. 34. When any minor, or other person liable to be put under guardianship according to the provisions of this chapter, shall reside without this territory, and shall have any real estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the court of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the court shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Powers of guardian of a non-resident.

SEC. 35. Every guardian appointed according to the provisions of the preceding section, shall have the same powers, and perform the same duties, with respect to any estate of the ward that shall be found within this territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by virtue of this chapter.

Bond.

SEC. 36. Every such guardian shall give bond to the judge of probate, in like manner, and with like condition, as is hereinbefore prescribed with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this territory.

Priority of appointment.

SEC. 37. The guardianship which shall be first lawfully granted to any person residing without the territory shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

Compensation of guardian.

SEC. 38. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the court in which his accounts are settled, shall deem to be just and reasonable.

Accounts of joint guardians.

SEC. 39. When an account is rendered by two or more joint guardians, the court may in its discretion allow the same, upon the oath of any one of them.

GENERAL PROVISIONS.

Who are spendthrifts

SEC. 40. The word "spendthrift" in all its provisions relating to guardians and wards, contained in this or any other statute, is intended to include every person who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery.

CHAPTER XXIV.

IMPROVEMENTS ON PUBLIC LANDS.

Sales of improvements on public lands declared valid.

SECTION 1. All contracts, promises, assumpsits, or undertakings, either written or verbal, which shall be made hereafter in good faith, and without fraud, collusion or circumvention, for sale, purchase or payment of improvements made on the lands owned by the government of the United

States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

Quit claim deed binding.

SEC. 2. All deeds of quit claim, or other conveyance, of all improvements upon public lands, shall be as binding and effectual in law and equity between the parties, for conveying of the title of the grantor in and to the same, as in cases where the grantor has the fee simple to the premises.

CHAPTER XXV.

INCORPORATIONS.

INSURANCE COMPANIES.

Insurance companies to file statement with territorial auditor. What said statement shall set forth.

SECTION 1. It shall be the duty of each and every insurance company incorporated under the laws of this territory, to file with the auditor of the territory a full and specific statement of the amount of cash paid in upon said stock; the amount of stock not paid for in cash; the amount secured by mortgages or pledges of real estate; the names and residences of the stockholders in said company, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security, also set opposite the name of each; the names of all the officers and agents of the company, wherever residing; the amount of policies issued by, and outstanding against the company, at the date of said report; the amount of premiums received by said company during the preceding six months; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real estate owned by said company, where held and owned, and in what manner such real estate became vested in said company; which report and statement shall be verified by the oath of the president and secretary of the company.

Semi-annual statement to be filed with

SEC. 2. It shall be the duty of every insurance company now created, or that may hereafter be created under territorial auditor. the laws of this territory, to file a semi-annual statement of the affairs of said company, with the auditor of the territory, on the first day of January and July in each year, which statement shall be verified by the oath of the secretary of the company. Such statement shall contain—

What it shall contain. *First.* The name and locality of the company.

Second. The amount of capital stock of said company.

Third. The amount of its capital stock paid up.

Fourth. The assets of the company, including—

1. The amount of cash on hand.
2. The amount of cash in hands of agents.
3. The real estate unincumbered.
4. The bonds and notes of the company, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for *bona fide* loans.
5. Debts of the company secured by mortgage.
6. Debts otherwise secured.
7. Debts for premiums.
8. All other securities.

Fifth. The amount of liabilities due or not due to banks or other creditors by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured by any one risk. And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the territory, and such company shall pay for said publication.

Penalty in case of failure to file statements. SEC. 3. A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any company, each, individually, to the penalty of one hundred dollars, to be recovered in an action at law in the name of any citizen of the territory, one-half of the same to the use of the territory, and the other moiety to the use of the informer.

Insurance SEC. 4. It is declared unlawful for any insurance company in this territory to purchase or hold any real estate, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said company, for any other purposes, are hereby declared to be void.

companies cannot hold real estate; exceptions.

SEC. 5. It shall not be lawful for any agent or agents of any insurance company, incorporated by any other state or territory, directly or indirectly, to take risks or transact any business of insurance in this territory without first procuring a certificate from the auditor of the territory; and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement, under the oath of the president or secretary of the company for which he or they may act, which statement shall show—

Foreign insurance companies to obtain certificates of authority from auditor

Statement required, what it shall contain.

First. The name and locality of the company.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid up.

Fourth. The assets of the company, including—

1. The amount of cash on hand, and in the hands of agents and other persons.
2. The real estate unincumbered.
3. The lands owned by the company, and how they are secured, with the rate of interest thereon.
4. The debts of the company secured by mortgage.
5. Debts otherwise secured.
6. Debts for premiums.
7. All other securities.

Fifth. The amount of liabilities due or not due to banks or other creditors by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense, waiting for further proof.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured by any one risk.

Twelfth. The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

Thirteenth. The greatest amount allowed to be insured in any one block.

Fourteenth. The act of incorporation of such company. Which statement shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of the territory, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance company, or agents of any insurance company, incorporated by any other state or territory, shall transact any business of insurance in this territory, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real estate worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the territory, and furnishing him with satisfactory evidence of such instrument, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the company.

Additional statement required.

SEC. 6. It shall be unlawful for any incorporated company or association, partnership, firm or individual, or any member or agent or agents thereof, or for any agent or agents of any company incorporated by any foreign government, other than a state of this Union, to transact any business of insurance in this territory without procuring a certificate of authority from the auditor of this territory, such company, association, partnership, firm or individual, or any agent or agents thereof, having first filed, under oath, in the office of said auditor, a statement, setting forth the charter or act of incorporation of any and every such incorporated company, and the by-laws, copartnership agreement and articles of association of any and every such unincorporated company, association, partnership or firm; and the name and residence of such individual, and the names and residences of the members of every such partnership or firm; and the matters required to be specified by the provisions of this chapter, and the written authority therein mentioned; and furnish evidence, to the satisfaction of the auditor of the territory, that said company has invested in stocks of some one or more of the States of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States, or in bonds or mortgages of real estate situated in the United States, fully securing the amount for which the same is mortgaged, or bonds of cities of the United States, the aggregate market value of the investment of the company in which shall not be less than one hundred thousand dollars; and such incorporated company or unincorporated company, association, partnership, firm, or individual, or any agent or agents thereof, filing said statement and furnishing evidence of investment, as aforesaid, shall be entitled to a certificate of authority for such body or individual, in like manner as is provided in this chapter.

Statement to be renewed annually.

SEC. 7. The statement and evidences of investment required by this chapter, shall be renewed annually in the month of January of each year. The auditor of the territory, upon being satisfied that the capital, securities and investments remain secure, shall furnish a renewal of certificates as aforesaid; and the company, agent or agents obtaining such certificate, shall file the same, together with the statement upon which it was obtained or renewed, in the office of the auditor of the territory.

Who shall be deemed agents of companies.

SEC. 8. Any person or firm in this territory who shall receive or receipt for any money, on account of or for any contract of insurance made by him or them, or for any such insurance company or individual aforesaid, or who shall receive or receipt for money from other persons to be transmitted to any such company or individual aforesaid, for a policy or policies of insurance or any renewal thereof, although such policy or policies of insurance may not be signed by him or them, as agent or agents of such company, or who shall in any wise, directly or indirectly, make or cause to be made any contract or contracts of insurance, for or on account of such company aforesaid, shall be deemed, to all intents and purposes, an agent or agents of such company, and shall be subject and liable to all the provisions of this chapter.

Copies of all papers herein required, are to be received as evidence in courts.

SEC. 9. Copies of all papers required by this chapter to be deposited in the office of the auditor of this territory, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner and have the same force and effect as the original would have if produced.

Violations of provisions of this subdivision, penalty.

SEC. 10. Any person or persons violating the provisions of this subdivision, shall, upon conviction thereof, in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this subdivision may be prosecuted by information filed by the prosecuting attorney of the proper county, or by indictment of the grand jury.

Companies only required to furnish single statement for more than one agent.

SEC. 11. Any insurance company complying with the provisions of this subdivision, and securing the certificate of the auditor for any of its agents, shall not be required to furnish the single statement, and evidences required hereby for more than one of such agents, which being filed with the auditor of this territory, shall be deemed a sufficient compliance for its free transaction of business in this territory.

Guarantee fund; requirements in case of special guarantee in other states.

SEC. 12. If any insurance company, firm or individual, or their agent or agents, having filed its or their statement as required by this subdivision, and conformed to the requirements thereof, shall have on deposit in any other state or territory, or elsewhere than in this territory, any portion of its capital or earnings as a guarantee fund for the exclusive benefit or security of persons insured in such state or territory, or other place, it shall be the duty of the auditor of the territory to withhold from such body or individual so alienating any such portion of their capital or resources, the certificates and authority in this subdivision provided for, until such body or individual shall file with the auditor of the territory, a statement, duly verified by the oath or affirmation of the president or secretary of such incorporated company, association, partnership or firm, or of such individual, showing the amount of premiums received in this territory by such company during the year ending on the first of January next preceding the filing of said statement, and shall deposit in this territory, in such manner as the auditor of the territory shall direct, five per cent. of the amount received in money, or any solvent state or United States stocks of at least par value, or mortgages on real estate situated in this territory, of at least double the value for which the same is mortgaged; which statement and deposit shall be so made from year to year, at the time of each renewal or original grant of authority by said auditor, until the sum of forty thousand dollars is deposited as aforesaid, which said sum and every yearly part thereof deposited as aforesaid, shall be held under control of such auditor of the territory, as a guarantee fund for the benefit of such persons as may be in any manner insured in their property by such company in this territory, and the same or any part of the sum so deposited, shall not be drawn out of the depositors, until all claims for losses or premiums, or risks unexpired, shall be paid and discharged, or until all deposits made in other states, territories, or other places not within this territory shall be withdrawn; and in case of the insolvency of any such company, the sums so deposited as aforesaid shall be applied by the auditor of the territory, *pro tanto*, towards the payment of all claims against such body or individual filed in his office, duly liquidated and authenticated, and losses and premiums or risks unpaid on policies issued within six months after such insolvency may occur. Any such body or individual shall be deemed insolvent, upon failure to pay any undisputed loss insured against within this territory for the space of ninety days after final judgment for the amount of any loss so insured against, when no appeal shall have been taken from such judgment by either party, or other proceeding begun to vacate, modify, reverse or review such judgment, or to arrest the same, or to obtain a new trial. Such body or individual shall be entitled to receive the interest or dividends on such stocks so deposited from time to time as the same may become due. This section shall not apply to any of the aforesaid bodies or individuals who have made no such deposits, as in this section mentioned, elsewhere than in this territory.

Mutual insurance companies exempt from provisions of this subdivision, except as to publication of statement and certificate.

SEC. 13. Mutual insurance companies incorporated by any state or territory other than the territory of Nebraska, upon filing in the office of the auditor the act of incorporation of said company, together with a written instrument under seal of said company, signed by the president and secretary of said company under oath, certifying that said company is possessed of a capital of at least one hundred thousand dollars, secured by lien on real estate, worth at cash valuation at least five times the amount of said capital, and not encumbered to more than one-fourth of said cash valuation, shall be entitled to a certificate from said auditor, with authority to transact business of insurance in this territory, and said company shall be exempt from the provisions of this subdivision, with the exception of the publication of statement and certificate of the auditor.

Statement to be filed with auditor, and published.

SEC. 14. It shall be the duty of the agent or agents in either of the foregoing sections mentioned, before taking any risks or transacting any business of insurance in this territory, to file in the office of the county clerk of the county of which he or they may desire to establish an agency for any such company, a copy of the statement required to be filed with the auditor of the territory as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said clerk; and said statement and certificate shall be published one week in one daily and four weeks in one weekly newspaper printed and published in the county in which such agent or agents has or have his or their office of business as such agent or agents; and if no daily paper is published in such county, then such publication shall be sufficient if made in one weekly newspaper as aforesaid, but if no weekly newspaper be printed or published in such county, then such publication shall be made in one weekly newspaper of this territory of most general circulation in such county.

COLLEGES, UNIVERSITIES, NORMAL SCHOOLS, ACADEMIES, ETC.

Corporations for establishment of schools, etc., how formed.

SEC. 15. Any number of persons, not less than five, desiring to establish a college, university, normal school, or other institution for the purpose of promoting education, religion, morality, agriculture or the fine arts, may, by complying with the provisions of this subdivision, become a body corporate and politic with perpetual succession, and may assume a corporate name by which they may sue and be sued, plead and be impleaded in all courts of law and equity; may have a corporate seal, and the same alter and break at pleasure; may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the objects of the corporation, and the same to dispose of and convey at pleasure.

Value of property, how ascertained.

SEC. 16. To ascertain the property and value thereof, of any institution desirous of becoming a body corporate, under the provisions of this subdivision, it shall be the duty of the probate judge of any county of this territory, on application in writing, of any number of persons not less than five, of whom not less than five shall be resident freeholders of the county where such application is made, or where such institution is or is intended to be located, setting forth the objects for which they desire to become incorporated, to select three disinterested freeholders of the county and voters therein, as appraisers, who shall first take an oath for the faithful discharge of their duties, before some competent officer, and such appraisers shall then proceed to make a schedule, and upon actual view to appraise the true value, in money, of all such goods, chattels, lands and tenements, choses in action, rights, credits and subscriptions as such applicants shall exhibit to such appraisers, and shall return such schedule with their appraisement, and certificate of some officer authorized to administer oaths, that such appraisers were first duly sworn by him to discharge their duties as such appraisers, to the probate judge of the proper county; and if the amount so found shall be equal to the sum required for the commencement of any such institution as said applicants desire, such probate judge shall give such applicants a certificate of the fact, and they shall enter it in a book of records, by them provided for that purpose, which certificate, together with the corporate name and the articles of association, they shall also cause to be recorded in the county clerk's office of the county where such institution is or is intended to be located, and they shall thenceforward be a body corporate and politic, according to the provisions of this subdivision, and such probate judge, appraisers and county clerk shall be entitled to the same fees as for like services in other cases, and no more.

Trustees or directors, by whom chosen.

SEC. 17. The corporators of any college or university, which may be organized in accordance with the provisions of this subdivision, may elect five or more trustees, of whom not less than five shall be resident freeholders of the county where such college or university is located, who shall constitute a board of directors for such institution, and they shall have power to fill vacancies that may occur in their board, and shall hold their offices until their successors are elected and qualified according to the rules and by-laws that may be adopted by the board of trustees, but at all times at least five of such board of trustees shall be residents, freeholders of the county where such institution is located; and when any such board, in their corporate name, shall have acquired for the benefit of such institution five thousand dollars, in real and personal property, to be ascertained as herein provided, said trustees shall have power to appoint a president, professors, tutors and teachers, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws not inconsistent with the laws of this territory or the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary, and shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others, having reference to the course of study and the accomplishment of the student, as they may deem proper.

Corporation not dissolved by

SEC. 18. In case it should happen that an election for directors should not be held on the day appointed by the by-laws of any institution or company formed under the provisions of this subdivision, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors in such manner as shall be prescribed by the by-laws thereof.

failure to elect, etc.

SEC. 19. The trustees of any university, college or academy may hold, in trust, any property devised, bequeathed or donated to such institution, upon any specific trust, consistent with the object of said corporation.

Trustees may hold property.

SEC. 20. The president and professors shall constitute the faculty of any literary college or university instituted under the provisions of this subdivision, and have power to enforce the rules and regulations enacted by the trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

Faculty.

SEC. 21. When any number of persons shall have procured by subscription, donation, devise, purchase, or otherwise, the sum of five hundred dollars, for the purpose of establishing and sustaining an academy, such persons may adopt a corporate name and enter the same in the county clerk's office of the proper county, and proceed to the election of such officers and teachers as they may deem necessary; may, in their corporate name, sue and be sued, plead and be impleaded, in any court of law or equity of competent jurisdiction, and may have a corporate seal, may purchase and hold personal or real estate, and dispose of the same at pleasure, and do all other acts and things necessary for the promotion of education and the general interests of such academy.

When corporation may adopt name, etc.

SEC. 22. Any college, university or academy, now instituted, may come under the provisions of this subdivision by complying with the requisitions herein contained; and all such institutions now in existence, or that may hereafter be established, may connect therewith, to be used as a part of their course of education, any mechanical shops, or machinery, or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural purposes of such institution.

Corporations now instituted may come under the provisions of this subdivision

Capital stock may be increased, how.

SEC. 23. Any company which may be formed in pursuance of this subdivision, or which may now exist by virtue of any special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise or gratuitous subscription, may increase its capital stock or change it into scholarships, when it becomes necessary for the purpose of carrying out the object for which such company or corporation is formed, in the following manner: The directors, for the time being, shall make out and sign a certificate in which they shall set forth the amount to which such capital stock is to be increased, and the object, which certificate shall be deposited in the office of the county clerk of the proper county, and be by him recorded in the same manner as the articles of association and corporate name are required by this subdivision to be recorded.

Notice to be published.

SEC. 24. Before the capital stock of such company shall be increased, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper of general circulation, in the county in which such institution is located, at least four consecutive weeks, appointing a time and place for holding a meeting of the stockholders of the said company, specifying the amount to which it is proposed to increase the capital stock thereof; and a vote of at least two-thirds of the shares of the stock represented at such meeting, shall be necessary to an increase of its capital stock, and to authorize the directors to make and sign the certificate mentioned in the preceding section.

Stockholders individually liable in certain cases.

SEC. 25. Any university, college or academy that may become a body corporate under the provisions of this subdivision, the property of which is not derived by donation, gift, devise or subscription, but is owned by individuals in the shape of stock subscribed or taken, the owners of said stock shall be individually liable for the debts of said corporation to the amount of their stock respectively, and also in a sum equal thereto, over and above the amount of their stock: *Provided*, That the trustees or directors of any corporation organized under the provisions of this subdivision, the property of which is not owned by individuals in the shape of stock subscribed or taken, but is held upon trust or derived by devise, donation, gift, or subscription, shall not contract any indebtedness beyond the actual means or assets of said corporation; and if said trustees or directors contract debts or incur liabilities beyond the actual means or assets of said corporation, the trustees or directors so contracting shall be held liable in their individual capacity for the payment of the same, but the property of said corporation shall first be exhausted.

Trustees of college endowment fund, how created, duties, etc.

SEC. 26. Whenever three or more persons shall desire to create a board of trustees, to become incorporated as the trustees of a college endowment fund, they shall do so in the following manner, to wit: Whenever, at any meeting called for that purpose, the said persons, at least three of whom shall be residents of this territory, not less than three in number, as aforesaid, shall resolve to become a body politic and corporate, having a seal and corporate name, whereby they may sue and be sued in courts of justice in this territory, they shall prepare a statement, setting forth the name by which they shall be called, the amount of said fund, and the manner in which and the district to which the said fund shall be applied, whether within or without this territory, together with the name of the persons who shall act as trustees, which said statement shall be subscribed by all the persons composing said meeting, in the presence of some magistrate, or judicial officer having a seal, who shall attest the signing of the same, and the same shall be recorded in the office of the county clerk in the county where said meeting was held, and thereupon the persons named in said statement as trustees, and their successors in office, shall become a body corporate and politic for the purposes in said statement named and specified; and a certified copy of said record, under the hand and seal of the county clerk of said county, shall at all times be *prima facie* evidence of the existence of said corporation.

When application of fund may be changed.

SEC. 27. In any case where, in the original statement in the preceding section provided for, it is contemplated that the fund may be applied to any object, not inconsistent with the purposes of education, different from that particularly specified in said statement, the trustees above named, or their successors in office, may apply to the district court in the county where the record hereinbefore provided for was made, for the privilege to make such change, designating particularly the purposes to which it is proposed to apply the same; and the said court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of said fund, shall authorize and sanction such change.

Trustees to be body politic.

SEC. 28. The said board of trustees and their successors in office, shall be a body politic with perpetual succession, and they shall hold their offices for such terms and receive their appointments in such manner as shall be designated in the statement on record in the office of the county clerk, as hereinbefore provided.

BRIDGE COMPANIES.

Bridge companies, how formed

SEC. 29. Whenever any number of persons, not less than five, associate themselves together for the purpose of constructing a bridge over any of the streams of water in this territory, they shall, under their hands and seals, make a certificate specifying the amount of capital stock necessary, the amount of each share, the place where such bridge is to be built, and on what stream; and said certificate shall be acknowledged, certified, and forwarded to the secretary of the territory, and by him recorded and copied; and when so incorporated, they are hereby authorized to carry on the operations named in said certificate of incorporation, and by the name and style provided in such certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers, and be subject to all restrictions hereafter provided; but in all cases the banks on both sides of the stream where the said bridge is to be erected, shall be owned by said company, or they shall obtain in writing the consent of the owner or owners of the banks where the said bridge is to be erected, to erect the said bridge as aforesaid, unless the said banks at such point shall be in a public highway.

Corporators to open books.

SEC. 30. The corporators herein named shall open the books of said company for subscription to the capital stock of said bridge, and so soon thereafter as ten per cent.

of the capital shall be subscribed, they shall call a meeting of the persons who have subscribed stock as aforesaid, and shall then and there proceed to elect five directors, who shall be stockholders in said company, who shall hold their offices as such directors for one year from and after said election and until their successors are elected and qualified, one of whom shall be president, one treasurer, and one secretary, to be named on the tickets when voted for by the stockholders as aforesaid; each stockholder shall be entitled to one vote for each and every share of stock he may own, and after the first election no stockholder shall be entitled to a greater number of votes than the number of shares he may have paid into the said company. Officers to be chosen.

SEC. 31. The treasurer of said company, before entering upon his duties of office, shall enter into a bond with good and sufficient security, to be approved by said board of directors, payable to the said company, conditioned for the faithful performance of all and singular the duties of his said office, and that he will well and truly account for and pay over to the said company all moneys and property that shall, from time to time, come into his hands by virtue of his said office, and that he will use due and proper diligence to collect all moneys and demands that from time to time shall be due and owing to the said company, which it shall be his duty by law to collect. Treasurer to give bond, etc.

SEC. 32. The president shall preside at all meetings when present and not otherwise incapacitated, in which case, or in case of his absence, the board of directors shall choose a president from among their number, who shall perform the duties of the president at such meeting, and perform such duties as may from time to time be pointed out by the by-laws and rules of said company. Duties of president.

SEC. 33. The secretary shall keep a record of all meetings of the board of directors and other proceedings of said company, not required to be performed by any other officers of the said board of directors, and perform such other and further duties as may be assigned him from time to time by the rules and by-laws of the said company. Duties of Secretary.

SEC. 34. The said company shall have power from time to time, at any regular meeting of the board of directors, Company may make and change by-laws.

to make, alter and change such by-laws and rules for the government of the said company.

Rates of toll to be set up.

SEC. 35. The company, previous to receiving any tolls upon said bridge, shall set up and keep in a conspicuous place, a board on said bridge, on which shall be written, painted or printed, in a plain and legible manner, the rates of toll, which rates of toll shall have been prescribed by the district court of the proper county; and if any company shall demand or receive any greater rates of toll than the rate prescribed by said court, they shall be subject to a fine of ten dollars for each offense.

District court to fix rates of toll.

Compensation of officers.

SEC. 36. The compensation of the president and other officers of such company, shall be regulated and fixed by the rules and by-laws of such company from time to time.

MANUFACTURING COMPANIES.

Manufacturing companies, how formed.

SEC. 37. Whenever any number of persons associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the name of the place where such manufacturing establishment shall be located, and the name and style by which such company shall be known; said certificate shall be acknowledged, certified and forwarded to the secretary of the territory, and by him be recorded and copied; and when so incorporated, they are hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and by the name and style provided in said certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers as are conferred in this chapter upon bridge companies, and subject to all the restrictions hereafter provided.

Annual meeting, first Monday in January.
Directors to be chosen
General powers of corporation, etc.

SEC. 38. The annual meeting of the stockholders shall be held on the first Monday of January in each year, at which meeting the directors of the company shall be elected, and such other lawful business done as the stockholders shall deem necessary and proper; and should they fail to elect directors at the annual meeting, they shall hold a special meeting at some subsequent time for that purpose, by giving thirty days notice thereof in some newspaper of general circulation in such county; the directors shall hold their offices until their successors are chosen and qualified, but no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president of the corporation, and may appoint such other officers and agents as they may deem proper to transact their business, and prescribe the amount of compensation to be allowed them for their services, and such officers, when required by the by-laws, shall give bonds to the satisfaction of the directors, for the faithful discharge of the trust committed to them, and shall have power and are hereby authorized to make such rules, regulations and by-laws as may be necessary for their government, not inconsistent with the organic act of this territory. The directors shall have the general management of the affairs of the company, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the stockholders for the time being may prescribe, and may employ the capital and means of the company in such manufactures as they shall deem best for the company, and for the erection and maintenance of such machinery, dams, buildings, races and watercourses, subject always to the control of the stockholders, as may be necessary in the business of manufacturing, but for no other purposes than those connected with and pertaining to said business; they shall cause a record to be kept of all stock subscribed and transferred, and all business transactions, and their books and records shall at all reasonable times be open to the inspection of any and every stockholder; they shall also, when required, present to the stockholders reports, in writing, of the situation and the amount of business of the company, and declare and make such dividends of the profits from the business of the company, not reducing the capital stock while they have outstanding liabilities, as they shall deem expedient.

Duties of directors.

Commissioners to have power to open books.

SEC. 39. The persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open the books for the subscription to the capital stock of said company, and at such times and places as they shall deem proper, and the said company are authorized to commence operations upon the subscription of ten per cent. of said stock.

RELIGIOUS AND OTHER SOCIETIES.

Religious and other societies, how organized.

SEC. 40. It shall be lawful for any religious sect or denomination, fire company, or any literary, scientific or benevolent associations (other than colleges, universities, academies or seminaries,) within this territory, to elect, at a meeting of a majority of the members of any organized church, fire company, literary, scientific or benevolent association as aforesaid, called for that purpose, any number of their members, not less than three, to serve as trustees or directors, and one member as clerk, who shall hold their offices during the pleasure of the society or association.

Proceedings of meeting for organization to be recorded by county clerk: fees for same.

SEC. 41. That the clerk so appointed shall make a true record of the proceedings of the meeting provided for in this subdivision, and certify and deliver the same to the clerk of the county where such meeting shall be held, together with the name by which such church, fire company or association shall thereafter desire to be known; and it shall be the duty of each county clerk in this territory, immediately upon the receipt of such certified statement, to record the same in a book of record to be kept by him, provided for that purpose at the expense of his county, for which service he may demand the sum of ten cents per hundred words, and from and after making such record by the county clerk, the said trustees or directors, and their associated members and their successors, shall be invested with the powers, privileges and immunities incident to aggregate corporations; and a certified transcript of the record herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever in this territory, as *prima facie* evidence of the existence of such association and corporation.

Trustees to have perpetual succession, etc.

SEC. 42. The trustees or directors, who may be appointed under the provisions of this subdivision, and their successors in office, shall have perpetual succession by such name as may be designated, and by such name be legally capable of contracting, and prosecuting and defending suits, and shall have capacity to acquire, hold, enjoy, dispose of and convey all property, real and personal, which they may acquire by purchase, donation or otherwise, for the purpose of carrying out the intentions of such society or association, but they shall not acquire or hold property for any other purpose.

Officers may be elected, rules adopted, etc.

SEC. 43. Such society or association, when incorporated, may elect such officers and make such rules and regulations as may be necessary and expedient for its own government, and the management of its fiscal and other affairs to effect their respective objects.

Vacancies in board of trustees, how filled.

SEC. 44. If said board of trustees or directors, as is provided for in this subdivision, shall be vacated, either in whole or in part, by death, resignation or otherwise, such board of trustees or directors may be revived, or such vacancy or vacancies filled, in the manner pointed out in this subdivision for the original organization of said board, and a majority of said trustees or directors shall be a quorum for the transaction of business.

CEMETERIES.

Cemetery association, how incorporated.

SEC. 45. It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society; all such elections shall take place at a meeting of a majority of the members of such association, and after notice, for at least twenty days in a newspaper, or by posting at least three written notices at public places in the township.

Proceedings of meeting to be recorded, etc.

SEC. 46. The clerk hereinbefore authorized to be appointed, shall forthwith make out a true record of the proceedings of the meeting provided for by the preceding section, and certify and deliver the same to the clerk of the county in which such meeting shall be held, together with the name by which such association shall desire to be known; and it shall be the duty of each county clerk in this territory, immediately upon the receipt of such certified statement, to record the same in a book by him provided for that purpose, at the expense of the county; and the clerk shall be entitled to the same fees for his services as he is entitled to demand for other similar services; and from and after making of such record by the county clerk, the said trustees, and their associated members and successors, shall be invested with the powers, privileges and immunities incident to aggregate corporations; and a certified transcript of the record herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever within this territory, as *prima facie* evidence of the existence of such cemetery association.

Trustees to have perpetual succession.

SEC. 47. The trustees who may be appointed under the provisions of this subdivision, shall have perpetual succession, and shall be capable in law of contracting, and prosecuting and defending suits at law and in equity; and where suits shall be brought against said incorporation, mesne process against it may be served by leaving an attested copy thereof with one of the trustees, at least ten days before the return day thereof.

How process against served.

Powers of the association.

SEC. 48. Such association may have power to prescribe the terms on which members may be admitted, the number of its trustees and other officers (subject to the limitation set forth in this subdivision,) and the time and manner of their election and appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association, not inconsistent with this or any other statute of the territory, nor in violation of the organic act.

May hold real estate for cemetery purposes.

SEC. 49. Such association shall be authorized to purchase or take, by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery, not exceeding one hundred acres, which shall be exempt from taxation if used exclusively for burial purposes, and in nowise with a view to profit. After paying for such land, all the future receipts and income of such association, whether from the sale of lots, from donations, or otherwise, shall be applied exclusively to laying out, protecting, preserving and embellishing the cemetery and the avenues leading thereto, and to the erection of such building or buildings as may be necessary for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of future receipts, except for originally purchasing, laying out, inclosing and embellishing the grounds and avenues, for which a debt or debts may be contracted, not exceeding one thousand dollars in the whole, to be paid out of future receipts; and such association shall have power to adopt such rules and regulations as they deem expedient for disposing of and conveying burial lots.

What debts may be contracted in anticipation of receipts.

SEC. 50. Burial lots sold by such association shall be for the sole purpose of interments, and shall be subject to the rules prescribed by the association, and shall be exempt from taxation, execution, attachment, or any other claim, lien or process whatever, if used exclusively for burial purposes and in no wise with a view to profit.

Burial lots exempt from taxation, etc

SEC. 51. Such association shall cause a plat of their grounds, and of the lots by them laid out, to be made and recorded, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, and erect buildings for the use of the association, and to prescribe rules for the inclosing and adorning lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper; and an annual exhibit shall be made of the affairs of the association.

Plat of grounds to be made and recorded.

SEC. 52. Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or grave stone, or other structure placed in any cemetery, or any fence railing or other work for the protection or ornament of a cemetery, or tomb, monument or grave stone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall willfully destroy, cut, break or injure any tree, shrub or plant, within the limits of a cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than five dollars

Mutilating cemetery grounds or property.

Penalty.

nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than one day nor more than thirty days, according to the nature and aggravation of the offense; and such offender shall also be liable, in an action of trespass in the name of the association, to pay all such damages as have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied to the reparation and restoration of the property destroyed or injured as above; and in all prosecutions and suits under this chapter, members of said association shall be competent witnesses.

Cemetery grounds not subject to sale on execution, etc.

SEC. 53. Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded in the county clerk's office of the county where such lands are situated, shall not be subject to sale on execution on any judgment to be hereafter recovered, to taxation, to dower, nor to compulsory partition.

GENERAL PROVISIONS.

Companies now incorporated may accept provisions of this chapter.

SEC. 54. All companies now incorporated in this territory, and actually doing business, may accept any of the provisions of this chapter, and when so accepted, and a certified copy of their acceptance filed with the secretary of the territory, that portion of their charters inconsistent with the provisions of this chapter is hereby repealed. All companies hereafter incorporated, or accepting the provisions of this chapter, except those named in the fortieth section of this chapter, are required to make and publish in some newspaper of general circulation in the county where the principal office is located, an annual exhibit, showing a full, fair and detailed statement of the condition of such company, which statement shall be verified by the oath of the president, secretary and clerk.

Annual exhibit to be published.

Company to employ its means for the objects of its incorporation only.

SEC. 55. No company or association incorporated under the provisions of this chapter, shall employ its stock, means, assets or other property, directly or indirectly for any other purpose whatever than to accomplish the legitimate object of its creation.

Capital stock may be reduced.

SEC. 56. The board of directors or trustees of any company heretofore incorporated, or which may hereafter be formed under any law of this territory, may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand on the books of said company, reduce the amount of the said capital stock, and the nominal value of all the shares thereof, and issue certificates therefor, provided that the rights of creditors shall not be affected or in any wise impaired by the reduction of the capital stock of any such corporation.

Companies created to erect improvement, may have further time if work is in progress.

SEC. 57. Whenever any joint stock company hereafter incorporated for the purpose of erecting any public improvement in this territory, whose charter may be limited as to the time of completion of said improvement, and when any such company has been legally organized, and has actually commenced, and has in progress toward completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as is hereinafter provided.

Extension of time, how and by whom granted.

SEC. 58. Upon petition being filed by the directors of any corporation, in the district court of the county in which the principal office of such corporation is located, and upon giving thirty days notice, by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable.

All officers to be residents of this territory, etc.

SEC. 59. All officers of any such incorporated companies, organized under the provisions of this chapter, shall be residents of this territory; and whenever any company, association or society, heretofore or hereafter incorporated, shall have failed to elect its officers at the time designated, it shall be lawful for any such company, association or society to call a meeting and elect its officers, who shall hold their respective offices until the time specified for the annual or other fixed time for holding such election; and when any incorporated company heretofore organized, or that may hereafter be organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting, a majority of the stockholders in interest may, at any regular annual meeting, change the time of the annual meeting thereof.

District court may authorize sale or incumbrance of real estate, bequeathed, etc., to corporation.

SEC. 60. When any real estate shall have been or may hereafter be bequeathed, aliened, donated or otherwise entrusted to any religious society in this territory, or to any of the trustees or officers of any such society, and such society shall be desirous to sell, exchange or encumber, by mortgage or otherwise, any such real estate, it shall be lawful for the district court of the proper county, upon good cause shown upon petition of any such society, or some person authorized by them, to make an order authorizing the sale or encumbrance of any such real estate, and said court may include in such order directions how the proceeds of such sale or incumbrance shall be appropriated or invested; provided such order shall in no case be inconsistent with the original terms upon which such real estate became invested in or entrusted to such religious society.

Petition, parties to, how notified

SEC. 61. When any religious society shall petition as is provided for in the preceding section, all persons who may have a vested, contingent or reversionary interest in the real estate sought to be sold or encumbered, shall be made parties to said petition, and such parties shall be notified of such petition in the same manner as is or may be provided for in cases of petitions for partitions of real estate: *Provided*, That the provisions of this chapter shall not extend to any grounds used or occupied as burial places for the dead.

Affairs of dissolved corporation, how settled.

SEC. 62. Upon the dissolution, by the expiration of the term of its charter or otherwise, of any corporation now existing, or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporations, acting last before the time of its dissolution, by whatever name they may be known in law, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dissolution, and said trustees may be made parties thereto by *scire facias;* and all liens of judgments and decrees of any courts of chancery, existing at the time of such dissolution, either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place: *Provided*, That in case of the death, resignation, inability or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any persons interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid.

Suits against corporation not to abate by reason of expiration of charter, etc.

SEC. 63. No suit or action, either at law or in chancery, pending in any court in favor of or against any banking or other corporation, shall be discontinued or abate by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise; but all such suits or actions may, in all courts of justice, be prosecuted by the creditors, assigns, receivers or trustees, having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.

Judgments or decrees to be enforced after corporation has dissolved.

SEC. 64. Upon all judgments and decrees in favor of or against any such corporation, whether such judgments or decrees exist at the time of the dissolution of such corporations or are obtained afterwards, in suits or actions pending at the time of such dissolution, execution may be had, and satisfaction or performance of the same be enforced by the creditors, assigns, receivers or trustees having the legal charge of the assets of such dissolved corporation, in the corporate name of such dissolved corporation.

Title of real estate of dissolved corporation to pass to trustees.

SEC. 65. The title of all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of such corporation, who shall have full power and authority to sell and dispose of any such real estate, in such manner and upon such terms as may be thought best for the interest of the creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.

Trustees to be subject to control of court of chancery.

SEC. 66. The trustees of any such dissolved corporation shall be subject to the control of the court of chancery, and be liable to be sued by petition in chancery, on behalf of any person interested, on account of any neglect or omission of duty, or abuse of trust; and in case of the removal of any such trustee by such court for an abuse of trust, such court shall have the power and authority to appoint a suitable person to fill the vacancy, and any such trustee may, for reasonable cause, upon the application of any creditor or stockholder, be required by the district court to give bond and security in such amount and subject to such conditions as the court may direct.

Dissolved corporations may prosecute suits.

SEC. 67. Any corporation created by this chapter may, at any time after its dissolution, whether such dissolution occur by the expiration of its charter or otherwise, prosecute any suit at law or in equity, in and by the corporate name of such dissolved corporation, for the use of the party entitled to receive the proceeds of any such suit, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued in favor of such corporation, in the same manner and with the like effect as if such corporation were not dissolved.

Dissolved corporations may be sued in corporate name.

SEC. 68. Any such dissolved corporation may be sued at law or in equity, in and by its corporate name, for or upon any cause of action accrued, or which but for such dissolution would have accrued against such corporation, in the same manner and with the like effect as if such corporation were not dissolved, and all process by which any suit, either at law or in equity, may be instituted against any such dissolved corporation, may be served by the sheriff or any other proper officer by delivering to any one of the assignees, trustees, receivers or persons having charge of the assets of such dissolved corporation, a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver or person having charge of such assets.

Judgments or decrees, how revived

SEC. 69. Judgments and decrees, in favor of or against any such dissolved corporation, whether such judgments and decrees were rendered before or after such dissolution, and which have heretofore, or may at any time hereafter become dormant, may be revived in favor of or against such dissolved corporation, as the case may be, in and by the corporate name of such dissolved corporation, in the same manner and with the like effect as if such corporation were not dissolved; and in all cases of judgments or decrees against any such corporations, the writ of *scire facias* or other proper process shall be served in the manner prescribed in the preceding section for the process in suits against dissolved corporations.

Writs of error, bills of review, etc.

SEC. 70. Writs of error upon judgments at law may be sued out, and bills of review in chancery may be exhibited, in favor of or against any such dissolved corporation, and by its corporate name, in the same manner and with the like effect as if such corporation were not dissolved, and process thereon against any such dissolved corporation shall be served in the manner prescribed in this subdivision.

Not to be construed to revive bank charter, except, etc.

SEC. 71. Nothing in this chapter contained shall at any time be construed as extending or reviving the charter of any banking or other corporation, dissolved either by affluxion of time or otherwise, for any other purpose than that of judicial proceedings, in favor of or against the same.

RAILROAD COMPANIES.

Five or more persons may become a body corporate.

SEC. 72. Any number of natural persons, not less than five, may become a body corporate, with all the rights, privileges and powers conferred by, and subject to all the restrictions of this subdivision.

Shall make a certificate.

SEC. 73. Any number of persons as aforesaid, associating to form a company for the purpose of constructing a

What it shall specify railroad, shall, under their hands, make a certificate, which shall specify as follows:

First. The name assumed by such company and by which it shall be known.

Second. The names of the places of the termini of said road, and the county or counties through which said road shall pass.

Third. The amount of capital stock necessary to construct such road.

Acknowledgment, etc., of certificate. Such certificate shall be acknowledged before a notary public, and certified by the clerk of the district court in the same manner as is provided for the conveyance of real estate, and shall be forwarded to the secretary of the territory, who shall record and carefully preserve the same in his office; and a copy thereof, duly certified by said secretary under the seal of the territory, shall be *prima facie* evidence of the existence of such corporation. Copy of, to be evidence.

When above provisions have been complied with, corporators to be deemed a body corporate; general powers, etc. SEC. 74. When the foregoing provisions have been complied with, the persons named as corporators in said certificate are hereby authorized to carry into effect the objects named in such certificate in accordance with the provisions of this subdivision, and they, and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects of the corporation; to make and use a common seal, and the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created. And such company shall possess all the powers and be subject to all the rules and restrictions provided by this subdivision.

May lay out, construct and maintain a railroad. SEC. 75. Such corporation shall be authorized and empowered to lay out, locate, construct, furnish, maintain, operate and enjoy a railroad with single or double tracks, with such side tracks, turn-outs, offices and depots as shall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city or village, named as the places of the termini of said road, and construct branches from the main line to other towns or places within the limits of this territory.

Capital stock to be in shares of $100; shall be regarded as personal property.

SEC. 76. The capital stock of such company shall be divided into shares of one hundred dollars each, and consist of such sum as may be named in the certificate; such shares shall be regarded as personal property, and shall be subject to sale or transfer, and to execution at law.

Ten per cent. of stock to be paid when subscribed.

SEC. 77. An installment of ten per cent. on each share of stock, shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments and at such times and places as may be required by the directors of such company.

Delinquent stock may be declared forfeited.

SEC. 78. If any installment of stock shall remain unpaid for sixty days after the time it may be required or specified in the call by order of the board of directors, whether said stock is held by an assignee, transferee or original subscriber, the same may be collected by action of debt, or the directors may, at their election, serve upon such stockholder, in case he shall be a resident of the territory, thirty days notice in writing, that such installment has been due and unpaid for the term aforesaid, or in case such stockholder shall be a non-resident of this territory, publish in some newspaper printed at the capital of this territory, and of general circulation in this territory, a like notice that such installment has been due and unpaid for the term aforesaid; and if the said installment shall not be paid, with all the charges and expenses incurred in the proceedings hereby prescribed, within ninety days after the service of notice or the last publication provided for as aforesaid, the said stock, and all the right, title and interest of the said assignee, transferee or original subscriber therein, shall, by virtue of such failure, and without further action by such company, become forfeited, and may be disposed of by said company as it sees proper.

Increase of capital stock, how effected.

SEC. 79. Whenever any railroad company heretofore incorporated, or created and incorporated under the provisions of this subdivision, shall, in the opinion of the directors thereof, require an increased amount of capital stock, they shall, when authorized by the holders of a majority of the stock, file with the secretary of the territory, a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate.

Corporators may open books for subscription of stock.

SEC. 80. The persons named in said certificate of incorporation, or any three of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said company, at such time or times, and at such place or places as they may deem expedient, after having given at least thirty days notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books; and so soon as ten per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate, for the purpose of choosing seven directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified. At the time and place appointed, directors shall be chosen by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a plurality of votes cast at such election shall be necessary for a choice; but after the first election for directors, no person shall vote on any share on which any installment is due and unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board, and be competent to fill vacancies therein, make by-laws not inconsistent with the provisions of this subdivision or the laws of this territory, and alter the same at pleasure, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient,

Election of directors, how conducted.

New election for directors to be held annually.

choose one of their number to be president, and shall appoint a secretary and treasurer of the corporation. The directors shall, from time to time, make such dividends of the profits of the said company as they may think proper, and the said by-laws and all alterations and revisions thereof shall be recorded and preserved in the office of the secretary of the territory, in the same manner as the certificate provided for in section seventy-three of this chapter.

Real estate may be entered upon and appropriated for railroad purposes.

SEC. 81. Such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold and appropriate so much real estate as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such company to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains: *Provided*, That the lands so held, taken and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavations, embankments, or depositing waste earth: *And provided, further*, That no appropriation of private property, for the use of any corporation provided for in this subdivision, shall be made, until full compensation therefor be first made or secured to the owners thereof.

Compensation for property appropriated.

Grade or location may be changed.

SEC. 82. Whenever any railroad company, heretofore incorporated, or which may hereafter be incorporated, shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of their road, whether heretofore made, or hereafter to be made, such railroad companies shall be and are hereby authorized to make such changes of grade and location, not departing from their general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such companies shall have all the rights, powers and privileges to enter upon, and appropriate such lands and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change, to the owner or owners of lands upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed, unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner or owners residing on the premises, or notice by publication in some newspaper in general circulation in the county, if non-resident.

Damages resulting from change

Occupation of streets, alleys, etc.

SEC. 83. If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals by the eighty-first section of this chapter.

Corporation may borrow money, etc.

SEC. 84. Such company shall have power to borrow money on the credit of the corporation, and may execute bonds or promissory notes therefor, and to secure the payment thereof, may pledge the property and income of such company.

May acquire real estate in vicinity of road.

SEC. 85. Such company may acquire, by purchase or gift, any lands in the vicinity of said road, or through which the same may pass, so far as the same may be deemed convenient or necessary by said company to secure the right of way to such as may be granted to aid in the construction of such road, and the same to hold or convey in such manner as the directors may prescribe; and all deeds and conveyances made by such company shall be signed by the president under the seal of the corporation, and any existing corporation may accept the provisions of this subdivision, by filing in writing their acceptance thereof, under the seal of said corporation, in the office of the secretary of the territory. And upon filing such acceptance, such corporation shall, from the date thereof, succeed to, and become invested with all the rights, privileges, immunities and powers conferred by this subdivision, without reorganizing. The said secretary shall record and preserve such acceptance in his office, and a copy thereof, duly certified by said secretary, under the seal of the territory, shall be evidence in all the courts of this territory, of such acceptance.

May cross roads, canals or streams.

SEC. 86. Any railroad company may construct and carry their railroad across, over or under any road, railroad, canal, stream or water-course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct their railroad crossings as not unnecessarily to impede the travel, transportation or navigation upon the road, railroad, canal, stream or water-course so crossed. Said corporation shall have the right to change the channel of any stream or water-course from its present location or bed, whenever it may be necessary in the location, construction or use of their said road, provided they do not change its general course, or materially impair its former usefulness.

Shall establish an office on line of road

SEC. 87. Such corporation shall, upon commencing business, establish an office at some point on the line of its road, and may change the same at pleasure.

Shall make annual report in January to territorial auditor.

SEC. 88. Each and every railroad company, incorporated under this subdivision, and such as shall hereafter accept the same, shall annually, in the month of January, make, upon the oath of the president, secretary or treasurer, a full report of the condition of its affairs to the auditor of the territory, showing the amount of the capital stock of such company, the gross amount of receipts during the previous year, the cost of repairs and incidental expenses, the net amount of profits and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such road; and the auditor shall incorporate an abstract thereof in his annual report to the general assembly.

May consolidate with other companies.

SEC. 89. Whenever the lines of railroad of any railroad companies in this territory, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such companies are hereby authorized to consolidate themselves into a single corporation, in the manner following:

Manner of consolidation.

The directors of said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the directors thereof, which shall not be less than seven; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations, into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporations shall possess all the powers, rights and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this subdivision: *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid

Proviso.

the market value of said stock, at the date of such consolidation.

Agreement to consolidate not to be valid till approved by a two-thirds vote of stockholders.

SEC. 90. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known, and deposited in the post office, and published at least for six successive weeks, in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders, by the vote of at least two-thirds in the amount of the stock represented at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

Agreement to consolidate to be filed with secretary of territory.

SEC. 91. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate in counterpart thereof, in the office of the secretary of the territory, the said two or more corporations (mentioned or referred to in the last two preceding sections, or any other law of this territory,) shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

Title to property of former companies to vest in consolidated companies.

SEC. 92. Upon the election of the first board of directors of the corporation created by the agreement in the preceding section mentioned, and by the provisions of this subdivision, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the rights and interests in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to, and vested in, such new corporation, without any other deed or transfer. And such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations. And the titles, and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this subdivision contained: *Provided*, That all rights of creditors, and all liens upon the property of either of said corporations, shall be, and hereby are, preserved unimpaired; and the respective corporations shall continue to exist, as far as may be necessary to enforce the same: *And provided, further*, That all debts, liabilities and duties of either company shall henceforth attach to such new corporation and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

Proviso.

All roads consolidated to be kept in good repair; and no discrimination to be made in favor of either.

SEC. 93. When any two or more railroad companies shall become consolidated, as contemplated by the provisions of this subdivision, such companies so consolidated, shall keep each and every railroad line that may come into its possession by such consolidation, in good running order, with sufficient rolling stock to transport the freight and passengers. They shall not discriminate against the business of either or any of said railroad lines, either directly or indirectly, by the detention of freight or passengers, or by charging more for freight or passage than is charged in proportion upon any other railroad line under the control of said company so consolidated.

Railroads may aid each other by subscriptions; may lease other roads, etc.

SEC. 94. Any railroad company heretofore or hereafter incorporated may, at any time, by means of subscription to the capital stock of any other company, or otherwise, aid such company in the construction of its railroad, for the purpose of forming a connection of said last mentioned road with the road owned by the company furnishing such aid; or any railroad company existing in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other company, if said company's lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively; or any two or more railroad companies whose lines are so connected, may enter into an arrangement for their common benefit consistent with, and calculated to promote the objects for which they were created: *Provided*, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in manner as they shall designate, and the holders of at least two-thirds of the stock of such company, represented at such meeting either in person or by proxy, and voting thereat, shall have assented thereto.

Proviso as to assent of stockholders.

SEC. 95. Any railroad corporation may purchase and use real estate for a price to be agreed upon with the owners thereof; or the damages to be paid by such corporation for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the probate judge of the county wherein such real estate is situated, in conformity with the provisions of this subdivision: *Provided*, That if the company shall need or require, for the purpose of constructing said railroad, to take and occupy any real estate, in any unorganized county, or other unorganized country in this territory, where there is no probate judge, then the probate judge of the first organized county east of said lands, upon the line of said road, shall appoint commissioners to assess said damages, and to perform all other duties required by the probate judges and commissioners, by the terms of this subdivision, and either shall have the right to appeal, as in other cases provided for by this subdivision.

May purchase real estate; damages, how determined.

Proviso as to property in unorganized counties

SEC. 96. Whenever any railroad corporation shall take any real estate as aforesaid, of any minor, insane person, or any married woman whose husband is under guardian-

Property of minors, etc., how acquired.

ship, the guardian of such minor or insane person, or such married woman with the guardian of such husband may agree and settle with said corporation for all damages or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

Right of way, how appropriated when parties cannot agree.

SEC. 97. If the owner of any real estate over which said railroad corporation may desire to locate their road, shall refuse to grant the right of way through his or her premises, the probate judge of the county in which said real estate may be situated, as provided in this subdivision, shall, upon the application of either party, direct the sheriff of said county to summon six disinterested freeholders of said county, to be selected by said probate judge and not interested in a like question, unless a smaller number is agreed upon by the parties, whose duty it shall be to inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land to the use of said railroad corporation, and make report in writing to the probate judge of said county, who, after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and the said county clerk shall file, record and index the same in the same manner as is provided for the record of deeds in this territory. And such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided. And if said corporation shall, at any time before they enter upon said real estate for the purpose of constructing said road, pay to said probate judge for the use of said owner, the sum so assessed and returned to him as aforesaid, they shall thereby be authorized to construct and maintain their railroad over and across said premises: *Provided*, That either party may have the right to appeal from such assessment of damages to the district court of the county in which such lands are situated, within sixty days after such assessment. And in case of such appeal, the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified, to the county clerk, to be filed and recorded, as hereinbefore provided, in his office. But such appeal shall not delay the prosecution of the work on said railroad, if such corporation shall first

Right of appeal to the district court.

pay or deposit with said probate judge the amount so assessed by said freeholders; and in no case shall said corporation be liable for the costs on such appeal, unless the owner of such real estate shall be adjudged entitled, upon the appeal, to a greater amount of damages than was awarded by said freeholders. The company shall, in all cases, pay the costs of the first assessment: *Provided*, That either party may appeal from the decision of the district court to the supreme court of the territory, and the money so deposited, shall remain in the hands of the probate judge until a final decision be had, subject to the order of the supreme court.

To supreme court.

Freeholders appointed to assess damages, to decide all cases in their county

SEC. 98. Freeholders so appointed shall be the commissioners to assess all damages to the owners of real estate in said county; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county to grant the right of way as aforesaid, by giving the said owner or guardian ten days notice thereof in writing, either by personal service or by leaving a copy thereof at his usual place of residence, have the damages assessed in the manner hereinbefore prescribed.

In case of vacancy in commission of freeholders, probate judge shall fill by selection.

SEC. 99. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the sheriff shall, upon the selection of said probate judge, summon other freeholders to complete the panel, and said commissioners shall proceed as directed in the preceding section. Said commisioners shall receive two dollars per day, each, for their services, and the same shall be taxed in the bill of costs.

Compensation of commissioners.

Right of way through lands of non-residents, how appropriated.

SEC. 100. If upon the location of said railroad it shall be found to run through the lands of any non-resident owner, the said corporation may give four weeks notice to such proprietor, if known, and if not known, by a description of such real estate, by publication four consecutive weeks in some newspaper published in the county where such lands may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through his or her lands; and if such owner shall not, within thirty days thereafter, apply to said probate judge to have the damages assessed in the mode prescribed in the preceding sections, said company may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners; and upon the payment of the damages assessed, to the probate judge of the proper county for such owner, the corporation shall acquire all rights and privileges mentioned in this subdivision.

Railroads may raise or lower turnpikes, etc., at crossing points.

SEC. 101. Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having their railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road or other way, as soon as may be, in good repair.

Shall keep crossings in good order while lowering or raising same.

SEC. 102. Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide, and keep in good order, suitable temporary ways to enable travelers to avoid or pass such obstructions.

Same as to bridges, etc., by them constructed.

SEC. 103. Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling their road to pass over or under any turnpike, road, canal, water-course or other way.

Bell or whistle to be kept on each locomotive, etc.

SEC. 104. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this territory, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

Railroads may pass over school and saline lands, etc.

SEC. 105. Any railroad corporation shall be authorized to pass over, occupy and enjoy, any of the school, university, saline or other lands of this territory: *Provided*, That no more of such lands shall be taken than is required for the necessary use and convenience of such corporation: *And provided further*, That the damages accruing to any occupant or owner, or other person who may reside or have improvements on said land, shall be determined and paid by said railroad company as heretofore provided in this subdivision.

SEC. 106. When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other adequate means of crossing the same.

Shall put in good crossings in certain cases.

SEC. 107. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any place within five miles of any station.

Passengers refusing to pay fare may be put off.

SEC. 108. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not less than six months nor more than one year, and be imprisoned until the fine is paid.

Penalty against engineers or conductors who become intoxicated while on duty.

SEC. 109. If any person or persons shall willfully do or cause to be done any act or acts whatever, whereby any building, construction or work of any railroad corporation or telegraph line, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of such offense; and in case any person or persons shall willfully place any obstruction on the track, or change or misplace any switches of any railroad corporation, he shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor for the term of not more than ten years nor less than five years, said term of imprisonment to be fixed

Penalty against persons placing obstructions on railroads.

by the jury before whom such conviction shall be had; and in case death shall result to any passenger, employee of the company, or other person on the train, by reason of such obstruction, or change or displacement of switches, the person or persons committing such offense shall be deemed guilty of murder, and shall, on conviction thereof before any court of competent jurisdiction, suffer the punishment provided for said offense by the laws of this territory; and it shall not be lawful for any person other than those connected with or employed upon the railroad, to walk or lead, ride or drive any animal along the track or tracks of any railroad.

Unlawful to walk, ride or drive along railroad tracks.

Railroad companies not liable in damages to persons injured while on the platform, etc., in violation of its rules.

SEC. 110. In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury, provided said company furnished room inside its passenger cars sufficient for the accommodation of its passengers.

Liable as common carriers for delivery of freight.

SEC. 111. Any railroad company receiving freight for transportation, shall be entitled to the same rights and be subject to the same liabilities as common carriers. And whenever two or more railroads are connected together, the company owning either of said roads receiving freight to be transported to any place on the line of either of the roads so connected, shall be liable as common carriers for the delivery of such freight to the consignee of said freight, in the same order in which such freight was shipped.

Liability of stockholders.

SEC. 112. Every stockholder of any railroad company shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole of the capital stock held by him shall have been paid to the company; but in no other case shall the stockholders be individually liable for the debts of the corporation.

Railways may cross, intersect or unite with other

SEC. 113. Every railroad company shall have power to cross, intersect, join and unite its railroad with any other railroad before constructed at any point on its route and upon the grounds of such other railroad company, with the necessary turn-outs, sidings and switches, and other conveniences in furtherance of the objects of its connection. And every company whose railroad is or shall hereafter be intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be selected as provided in this subdivision.

roads, etc., in this territory.

SEC. 114. Every railroad company shall have power to intersect, join and unite their railroads, constructed or to be constructed in this territory, or in adjoining states and territories, at such point on the boundary line of each, or at such other point as may be mutually agreed upon by said companies. And such railroads are authorized to merge and consolidate the stock of the respective companies, making one joint stock company of the railroads thus connected, upon such terms as may by them be mutually agreed upon in accordance with the laws of the adjoining state or territory with whose road or roads connections are thus formed: *Provided*, That the consent of three-fourths of all the stockholders in amount in any road whose stock is proposed to be consolidated shall be obtained.

Same as to roads in adjoining states or territories.

May also consolidate.

Proviso.

SEC. 115. Every railroad company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, is hereby empowered to extend their road into or through any other state or territory, under such regulations as may be prescribed by the laws of such state or territory through which said road may be extended; and the rights and privileges over said extension, in the construction and use of said railroads for the benefit of said company, and controlling and applying the assets of said company, shall be the same as if their railroads had been constructed wholly within this territory.

May extend their roads into or through other states.

May make contracts as to freight and passengers with roads in other states.

SEC. 116. Every railroad company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, and which may have constructed or commenced the construction of their road so as to meet and connect with any other railroad in an adjoining state or territory, at the boundary line of this terrritory, shall have the power to make such contracts and agreements with any such roads constructed in an adjoining state or territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

May execute mortgages or deeds of trust.

SEC. 117. Every railroad company shall have power and is hereby authorized to mortgage or execute deeds of trust of the whole or any part of their property and franchises, including any lands or other property granted to said company by the United States, to secure money borrowed by them for the construction and equipment of their roads, and may issue their corporate bonds in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise, and, if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent. per annum, and convertible into stock, or not, as shall be plainly expressed on the face of each and every bond so issued by said company, and may sell them at such rates or prices as they may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company upon any suit or proceedings upon the same; the principal and interest on said bonds, or either of them, may be made payable within or without this territory.

No plea of usury shall be put in or allowed.

Such mortgages or deeds of trust to be a valid lien upon all property therein enumerated

SEC. 118. Any mortgage or deed of trust made upon the lands, roads or other property of any railroad company, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock; and the purchaser under foreclosure of mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale: *Provided*, That nothing contained in this subdivision shall be so construed as in any manner to interfere with, change or modify the rights of this territory or of the United States, to any lands granted by Congress to this territory or to said companies, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States.

Such mortgages may include property thereafter to be acquired.

SEC. 119. Said mortgages or deeds of trust may by their terms include and cover not only the property of the companies making them at the time of their date, but property, both real and personal, which may thereafter be acquired by them, together with all the material and property necessary for the use and operation of said road, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

Mortgages to be recorded in each county through which the road passes.

SEC. 120. Said mortgages or deeds of trust shall be recorded in the office of the county clerk of each organized county through which said road mortgaged or deeded may run in this territory, or wherever it may hold lands included in said mortgages or deeds of trust, and shall be notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property and material necessary for operating the road of said company, belonging to said road, and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded, shall have the same effect, both as to notice and otherwise, as to the real estate covered by them.

Trains to be run at regular times, etc.

SEC. 121. Every such railroad corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of passengers and freight, and shall take, transport and discharge all passengers to and from such stations as the trains stop at, from or to all places and stations upon their said road, on the due payment of fare or freight bill.

Damages in case of refusal to carry freight and passengers.

SEC. 122. In case of the refusal, by such corporation or their agents, to take and transport any passenger or property, or to deliver the same or either of them, under the laws, rules and usages that regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

CORPORATIONS.

Association. SEC. 123. Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railways, bridges, and other works of internal improvement.

Corporate powers. SEC. 124. Every corporation as such, has power—

First. To have succession by its corporate name.

Second. To sue and be sued, to complain and defend in courts of law and equity.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation.

Fifth. To render the interest of the stockholders transferable.

Sixth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor.

Seventh. To make by-laws, not inconsistent with any existing law, for the management of its affairs.

Powers, in whom vested. SEC. 125. The powers enumerated in the preceding section, shall vest in every corporation in this territory, whether the same be formed without, or by legislative enactment, although they may not be specified in its charter, or as articles of association.

Articles of incorporation to be recorded. SEC. 126. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation, and have them recorded in the office of the county clerk of the county or counties in which the business is to be transacted, in a book kept for that purpose.

Copy to be filed with secretary of territory. SEC. 127. Corporations for the construction of works of internal improvement, must also file in the office of the secretary of the territory, a copy of their articles of association, and the same shall be recorded in a book kept for that purpose.

Indebtedness.

SEC. 128. The articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation shall, at any one time, be subject, which must in no case, except in that of the risk of insurance companies, exceed two-thirds of its capital stock.

Time of organization

SEC. 129. If any corporation hereafter created by the legislature, shall not organize within one year after its incorporation, its corporate powers shall cease.

Notice to be published.

SEC. 130. Notice must be published in some newspaper near the principal place of business, for four weeks.

What to contain.

SEC. 131. Such notice must contain—

First. The name of the corporation.

Second. The principal place of transacting its business.

Third. The general nature of the business to be transacted.

Fourth. The amount of capital stock authorized, and the time and conditions on which it is to be paid in.

Fifth. The time of commencement and termination of the corporation.

Sixth. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself.

Seventh. By what officers the affairs of the corporation are to be conducted.

Time of commencing business

SEC. 132. Any corporation formed without legislative enactment, may commence business as soon as its articles of incorporation are filed by the county clerks of the counties, as required by this subdivision, and shall be valid, if a copy of its articles be filed in the office of the secretary of the territory, and the notice required be published within four months from the time of filing such articles in the clerk's office.

Change.

SEC. 133. Every change, in any of the above matters shall be recorded, and published in the same manner as the original articles are required by law.

Dissolution.

SEC. 134. No corporation can be dissolved by the members thereof, except by consent of two-thirds of all its members; which consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

Copy of by-laws to be posted.

SEC. 135. A copy of the by-laws of the corporation, with the names of all the officers appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection.

Amount of debt.

SEC. 136. Every corporation hereafter created, shall give notice annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the territory, of the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors; and if any corporation shall fail to do so, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given.

May convey land.

SEC. 137. It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be an act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds.

May sue.

SEC. 138. All corporations may sue for, and recover from their respective members in any court of competent jurisdiction, all arrears or other debts due, or other demands which now are or hereafter may be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member, any law, usage or custom to the contrary notwithstanding.

Property liable for debts.

SEC. 139. If any corporation fail to comply substantially with the provisions of this subdivision, in relation to giving notice, and other requisitions of organization, the property of all the stockholders shall be liable for the corporate debts.

SEC. 140. If any deception be practiced by any corporation upon the public or individuals, in relation to its means or liabilities, all those engaged in such deception shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception, may recover double the amount of damages he may have sustained by reason of the same; in any court having jurisdiction of the amount claimed.

Penalties for deception in regard to means, etc.

SEC. 141. A division of the funds of a corporation, for other purposes than those mentioned in the act granting the charter and the payment of dividends, which have insufficient funds to meet the liabilities of the corporation, shall be deemed a violation of the provisions of this subdivision, and subject those engaged therein to the penalties herein prescribed.

Division of funds of insolvent corporation, except, etc., penalty.

SEC. 142. Any violation of the provisions of this subdivision shall cause a forfeiture of all the privileges conferred by the same, and the court may proceed to close the affairs of the corporation, by an information for that purpose.

Forfeiture.

SEC. 143. Corporations whose charters expire by their own limitation, or by the voluntary act of the stockholders, may continue to act for the purpose of closing their business, but for no other purpose.

May close business after expiration of charter.

SEC. 144. No body of men acting as a corporation under the provisions of this subdivision, shall be permitted to set up the want of legal organization as a defense to any action brought against them, as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defense of such action.

Want of legal organization no defense to action.

CHAPTER XXVI.

INSANE.

Governor to make arrangements for reception of insane in Iowa hospital, or with other state.

SECTION 1. The governor of the territory is hereby authorized and required, to make arrangements with the proper authorities of the state of Iowa, for the admission of insane patients, being citizens of Nebraska, into the Iowa hospital for the insane, upon such terms as may seem to him just: *Provided*, That if, from any cause, the governor should be unable to effect an arrangement with the authorities of the state of Iowa for the admission of the said patients, he is hereby empowered to enter into a contract with the proper authorities of such other state as he shall deem will best subserve the interests of the territory.

Proceedings to secure admission of patients, affidavit, etc

SEC. 2. For the admission of patients into the hospital, the following proceedings shall be had, viz.: Some resident of the proper county shall file with the probate judge of the same county an affidavit, which shall be substantially as follows:

THE TERRITORY OF NEBRASKA, } *ss.*
——— COUNTY. }

The undersigned, a citizen of ———, Nebraska, being sworn, says that he believes ——— is insane. His insanity is of less than two year sduration (*or* that his being at large is dangerous to the community.) He has a legal settlement in ——— county.

Dated this —— day of ——, A. D. ——

When the affidavit aforesaid shall be filed, the probate judge shall forthwith issue his warrant to some suitable person, commanding him to bring the person alleged to be insane before him, on a day in such warrant named, which shall not be more than five days after the affidavit shall be filed, and shall immediately issue subpœnas for such witnesses as he may deem necessary, (one of whom shall be a respectable physician) commanding those persons named in such subpœnas to appear before said judge on the return day of said warrant, and if any person shall dispute the insanity of the party charged, the probate judge shall issue subpœnas for such person or persons as shall be demanded on behalf of the party alleged to be insane.

Investigation; certificate.

SEC. 3. At the time appointed, (unless for good cause the investigation shall be adjourned), the judge shall proceed to examine the witnesses in attendance, and if, upon the hearing of the testimony, such judge shall be satisfied that the person so charged is insane, he shall cause a certificate to be made out by the medical witness in attendance, which shall set forth the following:

First. That the patient is free from any infectious diseases.

Second. The age of the patient, and a concise history of the case.

Third. The duration of the disease, dating from the first symptoms—which statement shall be sent to the hospital with the patient.

Fourth. The supposed cause of the disease, and whether it is hereditary.

Fifth. Whether the patient has attempted violence on himself or others.

Sixth. Whether the patient is subject to epilepsy.

Seventh. The medical treatment pursued in the case, as near as the same can be ascertained.

To which the witness shall add any other information or circumstances known to him, which may tend to throw light on the subject.

Probate judge shall apply to governor to receive patients.

SEC. 4. The probate judge, upon receiving the certificate of the medical witness, made out according to the provisions of section three of this chapter, shall forthwith apply to the governor of the territory, and shall at the same time transmit copies under his official seal, of the certificate of the medical witness and of the findings in the case. Upon receiving the application and said certificate, the governor shall immediately advise the probate judge whether the patient can be received, and if so, at what time. If said patient is received, the governor shall forthwith issue his order to the sheriff or any other suitable person, commanding him to forthwith take charge of and convey such insane person to the hospital.

Duties of superintendent on receiving patients.

SEC. 5. Upon receiving such patient, the superintendent shall indorse upon said order a receipt—and this order, with the receipt thereon, shall be returned to the governor who issued the same, and shall be filed by him, with the other papers relating to the case. In all cases the relatives of the insane person shall have the right, if they choose, to convey such person to the hospital, and in such case the warrant shall be directed to one of such relations:

Proviso.

Provided, That in case the medical witness shall not state in his certificate that the patient is free from any infectious disease, it shall be the duty of the probate judge to refuse to make application to the governor, as hereinbefore provided, until such certificate is furnished.

Patients to be supplied with clothing, etc

SEC. 6. When a patient is sent to a hospital, under the provisions of this chapter, it shall be the duty of the governor to see that the patient is supplied with clothing and such other articles as may be necessary, or required by the rules or regulations of the hospital to which such patient may be sent.

Expenses, how paid.

SEC. 7. The necessary expenses accruing under the provisions of this chapter, shall be paid out of the territorial treasury, upon the order of the governor, countersigned by the auditor: *Provided,* That in all cases where such insane person or his or her natural guardians have sufficient ability to pay the expenses incurred in his or her behalf by the territory of Nebraska, they shall pay the same, together with all costs and expenses incurred in recovery thereof; and suit may be commenced for the same in the name of the territory of Nebraska, at the direction of the governor of the territory.

Fees of probate judge.

SEC. 8. The probate judge shall be entitled to the same fees as for similar services, and, upon hearing and deciding upon such application, he shall be entitled to the same fees as hearing and determining a writ of *habeas corpus.*

Governor to report to legislature.

SEC. 9. The governor shall report to the legislature, annually, the number of patients sent, and the auditor shall furnish a report to the legislature, annually, of expenses incurred under the provisions of this chapter.

CHAPTER XXVII.

INSTRUMENTS NEGOTIABLE.

What instruments shall be negotiable by endorsement.

SECTION 1. All bonds, promissory notes, bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or order, or to any person or assigns, shall be negotiable, by endorsement thereon, so as absolutely to transfer and vest the property thereof in each and every endorsee successively, but nothing in this section shall be construed to make negotiable any such bond, note or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to order, bearer or assigns: *Provided*, That all such bonds, promissory notes and bills of exchange, made payable to bearer, shall be transferable by delivery without endorsement thereon.

Endorsee may maintain action on such instrument.

SEC. 2. Any endorsee to whom any such bond, note or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may in his own name institute and maintain an action on such bond, note or bill for the recovery of the money due thereon, against the maker, drawer or obligor, or against the endorsee, having first used due diligence to obtain the money of the drawer, maker or obligor.

Days of grace, and what to be adjudged due diligence.

SEC. 3. All notes, bonds or bills, made negotiable by this chapter, shall be entitled to three days grace in the time of payment, and the demand of payment, from the maker, on the third day of grace or of acceptance, if the instrument is a sight draft, and notice of non-payment or non-acceptance thereof to the endorser, within a reasonable time, shall be adjudged due diligence under the provisions of this chapter, unless the endorsement shall express in writing other conditions.

Defined where instrument endorsed after due.

SEC. 4. If any such bond, note or bill of exchange shall be endorsed after the day on which it is made payable, and the endorsee shall institute an action thereon against the maker, drawer or obligor, the defendant shall be allowed to set up the same defense that he might have done had the same action been instituted in the name and for the use of the person to whom the said note, bond or bill was originally made payable.

What evidence may be given in action on instrument, endorsed on or before day of payment.

SEC. 5. If any such bond, note or bill of exchange shall be endorsed on or before the day on which the same is made payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial any money actually paid on said bond, note or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of such payment before such endorsement was made and accepted.

Action may be prosecuted against drawers, etc. jointly or severally.

SEC. 6. It shall be lawful for any person or persons having a right to demand any sum of money upon any protested bond, note or bill of exchange as aforesaid, to commence and prosecute an action for principal, damages, interest and charges of protest against the drawers, makers or endorsers, jointly or severally, or against either of them separately. And judgment shall and may be given for such principal, damages, charges and interest upon such principal, after the rate aforesaid, to the time of such judgment, together with costs of suit.

Judgments thereon.

Damages when bill of exchange legally protested.

SEC. 7. When any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance or non-payment, the drawer or drawers, endorser or endorsers, shall be subject to the payment of twelve per centum damages thereon, if drawn upon any person or persons or body corporate, without the jurisdiction of the United States, and six per centum damages thereon, if drawn upon any persons or body corporate within the jurisdiction of the United States and without the jurisdiction of this territory.

CHAPTER XXVIII.

INTEREST.

SECTION 1. Any rate of interest which may be agreed upon, not exceeding twelve dollars per year upon one hundred dollars, shall be valid upon any loan or forbearance of money, goods or things in action; which rate of interest so agreed upon may be taken yearly, or for any shorter period, or in advance, if so expressly agreed. What rates of interest to be valid.

SEC. 2. Interest upon the loan or forbearance of money, goods or things in action, shall be at the rate of ten dollars per year upon one hundred dollars, unless a greater rate, not exceeding fifteen per cent. per annum, be contracted for by the parties. Same.

SEC. 3. Interest on all judgments or decrees for money shall be from the date of the rendition and signing thereof, at the rate of ten dollars upon one hundred dollars, until the same be satisfied. Rate of interest of judgment and decrees.

SEC. 4. On money due on any instrument in writing, or on settlement of account from the day the balance shall be agreed upon, on money received to the use of another, and retained without the owner's consent, express or implied, from the receipt thereof, and on money loaned or due, and withheld by unreasonable delay of payment, interest shall be allowed at the rate of ten per cent. per annum. Unsettled accounts between parties shall bear interest after six months from the date of the last item thereof. Rate of interest in other cases.

SEC. 5. If a greater rate of interest than is hereinbefore allowed shall be contracted for or received, or reserved, the contract shall not therefore be void; but if, in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken or reserved, the plaintiff shall only recover the principal without interest, and the defendant shall recover costs; and if interest Consequences where greater rate of interest contracted for.

shall have been paid thereon, judgment shall be for the principal, deducting interest paid.

Person may be required to answer on oath.

SEC. 6. Any person charged with taking illegal interest may be required to answer touching the same, on oath, in any civil proceeding.

When relief may be given.

SEC. 7. Relief to a complainant in case of a usurious loan, may be given without payment or tender by him of the principal sum.

Who may be summoned as witness in action for usury.

SEC. 8. Any officer or agent of a person or corporation, whether interested or not, may be summoned as witness in any action for usury against such person or corporation, and required to disclose all the facts of the case, but the testimony of such witness, or the answer of a party as required in section six, shall not be used against such witness or party in any criminal prosecution for usury.

When rate to be deemed by the year.

SEC. 9. When, in any law or in any instrument in writing specifying a rate of interest, no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year.

Rate of interest on territorial warrants.

Endorsement by the treasurer.

SEC. 10. All territorial warrants issued by the proper authorities of the territory, shall draw interest from and after the date of their presentation for payment, at the rate of ten per cent. per annum: *Provided*, The treasurer shall endorse upon such warrant the date of presentation, with the words "not paid for want of funds," and sign the same officially.

CHAPTER XXIX.

JAILS.

Judges shall prescribe rules for government of jails.

SECTION 1. The judges of the district courts of the several judicial districts of this territory shall, from time to time, as they may deem necessary, prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects:

First. The cleanliness of the prison and prisoners. What to embrace.

Second. The classification of prisoners in regard to sex, age and crime, and also persons insane, idiots and lunatics.

Third. Beds and clothing.

Fourth. Warming, lighting and ventilation of the prison.

Fifth. The employment of medical and surgical aid when necessary.

Sixth. Employment, temperance, and instruction of the prisoners.

Seventh. The supplying of each prisoner with a bible.

Eighth. The intercourse between prisoners and their counsel and other persons.

Ninth. The punishment of prisoners for violation of the rules of the prison.

Tenth. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: *Provided,* That said rules shall not be contrary to the laws of this territory.

SEC. 2. The said judges shall, as soon as may be, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules by mail to the territorial auditor, who shall carefully file away and preserve the same. Judges shall cause copy of rules to be delivered to county commissioners. Duty of commissioners.

SEC. 3. The said sheriff shall, immediately on the receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail. Duty of sheriff to post rules.

SEC. 4. The said judges may from time to time, as they may deem necessary, revise, alter or amend said rules, and such revised, altered or amended rules, shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by the second and third sections of this chapter. Judges may revise, etc.

Who to have charge of jail.

SEC. 5. The sheriff, or, in case of his death, removal or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may, from time to time, by said judge be made, and communicated to him by said commissioners.

Conformity to rules of judge required.

Jail register, what to be entered therein.

SEC. 6. The sheriff, or other officer performing the duties of sheriff, of each county in this territory, shall procure, at the expense of the proper county, a suitable book to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter—

First. The name of each prisoner, with the date and cause of his or her commitment.

Second. The date or manner of his or her discharge.

Third. What sickness, if any, has prevailed in the jail during the year, and if known, what were the causes of such disease?

Fourth. Whether any or what labor has been performed by the prisoners, and the value thereof.

Fifth. The practice observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing.

Sixth. The habits of the prisoners as to personal cleanliness, diet and order.

Seventh. The operations of the rules and directions prescribed by the district judge.

Eighth. The means furnished prisoners, of literary, moral and religious instruction, and of labor.

Ninth. All other matters required by said rules, or in the discretion of such sheriff deemed proper.

The said sheriff, or other officer performing the duties of sheriff, shall carefully keep and preserve the said jail register in the office of the jailer of his proper county, and at the expiration of said office shall deliver the same to his successor in office.

Jailer to make report

SEC. 7. The sheriff, or other officer performing the duties of sheriff, shall, on or before the first day of November in each year, make out in writing from said jail register, a jail report, one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of the territory; and it shall be the duty of the secretary of the territory to communicate the reports of the several sheriffs of the territory to the legislative assembly, on or before the first day of its session annually.

Where copies of report to be filed.

Secretary to communicate report of jailer to legislature.

SEC. 8. It shall be the duty of the district court to give this chapter in charge to the grand jury once each term of said court, and lay before them any and all rules, plans or regulations, established by the district judge, relating to county jails and prison discipline, which shall then be in force.

Duty of court to give chapter in charge to grand jury, etc.

SEC. 9. The grand jury of each county in this territory shall, once at each term of the district court while in attendance, visit the jail; examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits, diet and accommodations; and it shall be their duty to report to said court in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this chapter have been violated, pointing out particularly in what said violation, if any, consists. It shall also be the duty of the county commissioners of each county of this territory, to visit the jail of their county once during each of their sessions, in January, April, July and October of each year.

Duty of grand jury to visit jail and report to court.

Duty of county commissioners to visit jail.

SEC. 10. It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, frames and sacks for beds, night buckets, and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury:

Duty of county commissioners to provide furniture, etc., for jail.

May appoint physician when necessary.

Duty of physician.

and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever required by the said commissioners, district judge or grand jury.

Duty of sheriff to provide for prisoners.

His compensation to be prescribed by commissioners.

SEC. 11. It shall be the duty of the sheriff of each county to provide such bed clothing, washing, nursing when required, and board generally, and all necessaries for the comfort and welfare of said prisoners, as the said judge by his said rules shall designate, for all persons confined by law; and he shall be allowed such compensation for services required by the provisions of this chapter, as may be prescribed by said commissioners: *Provided*, That this section shall not be so construed as to give the sheriff a claim on the county for board or necessaries furnished any person confined for debt only.

Sheriff to visit jail at least once a month, and once during court.

Other duties

SEC. 12. The sheriff shall visit the jail in person and examine into the condition of each prisoner, at least once in each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms, used for the confinement of prisoners, to be thoroughly whitewashed, at least three times in each year.

Jailer, unless sheriff act in person, to be deputy appointed by him.

SEC. 13. The jailer or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy, appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his office: *Provided*, The sheriff shall in all cases be liable for the negligence and misconduct of the jailer, as of other deputies.

Penalty if sheriff or jailer neglect duty.

SEC. 14. If the sheriff or jailer, having charge of any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to perform any other duty required of him by this chapter, he shall, on conviction thereof by indictment, for each case of such failure or neglect of duty as aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than five dollars nor more than one hundred dollars, to be assessed by the district court of the proper district.

CHAPTER XXX.

JOURNALS AND LAWS.

SECTION 1. The secretary of the territory of Nebraska is hereby authorized to distribute the laws and journals of the territory, as hereinafter prescribed.

Secretary authorized to distribute laws and journals.

SEC. 2. The county clerk of each organized county shall make a requisition upon the secretary of the territory for sixty copies (or as many less than that amount as he shall find necessary for the county) of the laws, and fourteen copies of the journals of each branch of the legislative assembly, for the use of the county of which he is clerk; and he shall name the conveyance or means of transportation, and also specify to whom they shall be directed, and to whose care; and upon the receipt of such requisition, the secretary shall at once forward the required number of laws and journals as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of the territory.

County clerk shall make requisition on secretary for laws and journals.

SEC. 3. The county clerk shall distribute one copy of the laws to each of the officers of the county, as follows: The probate or county judge; each member of the board of county commissioners; the sheriff; the county treasurer; the county surveyor; the prosecuting attorney; each notary public; each justice of the peace; each constable; each road supervisor; and each precinct assessor, in said county. He shall also reserve one for himself, and give two copies each of the laws and journals to every councilman and representative who was a member of the legislative assembly by which the laws were enacted.

How county clerk to distribute laws.

SEC. 4. Each county officer shall deliver up to his successor in office, all statutes which shall have come into his possession under the provisions of this chapter, as soon after his successor shall have qualified as such successor or the county clerk may require.

County officer to deliver statutes to successor.

After distribution, residue to be sold.

SEC. 5. After the above distribution, the copies remaining in the hands of the county clerk shall be sold at public auction (ten days notice having been given in three public places in each county) to the highest bidder, no person, however, to purchase more than two copies; and the proceeds of such sale shall go, first, to defray the cost of transportation from the secretary of the territory to the county clerk, and the remainder, if any shall exist, shall be paid over to the territorial librarian, and to be by him held subject to the order of the legislative assembly.

After distribution, secretary authorized to sell copies.

SEC. 6. After having so distributed the laws and journals of each legislative assembly, the secretary is authorized to sell copies of the laws at a price at least equal to cost, and the amount so received shall be applied to the library fund of the territory. The secretary of the territory shall deliver all copies of the laws and journals yet in his possession to the territorial librarian, who shall officially receipt therefor.

To whom librarian to issue laws and journals.

SEC. 7. The librarian shall, upon the order of either of the judges of the supreme court, issue one copy each to the district attorney, United States marshal, each register and receiver of all United States land offices in the territory, each United States commissioner residing in the territory, and such other officers as the judges in their discretion may direct: *Provided always*, That the librarian shall permit no person to take away a copy or copies of the laws and journals, without taking a receipt therefor.

Librarian to furnish members of each succeeding legislature with a copy.

SEC. 8. The members of each succeeding legislative assembly shall be furnished by the territorial librarian, at the commencement of each session for which they are elected, with one copy each of the laws and journals of the preceding session.

CHAPTER XXXI.

LEGISLATURE.

SECTION 1. The time for the meeting of the legislature shall be on the first Thursday after the first Monday in January in each year. Time for meeting.

SEC. 2. At two o'clock in the afternoon of the day of the meeting of the legislative assembly, some person claiming to be elected a member shall call the house to which he belongs, to order, and the persons present claiming seats in that house as members shall elect a clerk for the time being. Who may call the house to order. Election of clerk.

SEC. 3. The clerks of each house shall file the certificates presented by members, each for his own house, and make a roll of the members who thus appear to be elected, and the persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being. Election of other officers.

SEC. 4. When the houses are temporarily organized, they shall elect a committee of five on the part of the house, and three on the part of the council, by ballot, which committee shall examine and report upon the credentials of those claiming to be elected members of their respective houses, and when such report is made, those reported as elected shall proceed to the permanent organization of their respective houses, and each house shall be the sole judge of the election returns and qualifications of its own members. Joint committee on credentials.

SEC. 5. Any member may administer oaths in the house of which he is a member, and while acting on a committee may administer oaths on the business of such committee. Oaths.

SEC. 6. No member of the legislative assembly shall be questioned in any other place for any speech or words spoken in debate, in either house.

Punishment for contempt. SEC. 7. Each house of the legislative assembly has power and authority to punish as a contempt, by fine or imprisonment, or either of them, the offense—of knowingly arresting a member, in violation of his privilege; of assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done in either house, as a member thereof; of attempting, by menace or other corrupt means, to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct, tending to disturb its proceedings; of refusing to attend, or to be sworn, or to be examined as a witness before either house or a committee, when duly summoned; of assaulting or preventing any person going to either house, or its committee, by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of either house, knowing such arrest; and of knowingly injuring any officer of either house in the discharge of his duties as such.

Imprisonment. SEC. 8. Imprisonment for contempt of either house, shall not be for more than six hours, and shall be in the jail of the county in which the legislative assembly may then be sitting, or if there be no jail, then in one of the nearest county jails.

Fine not to exceed $50. SEC. 9. Should a fine be imposed for any offense mentioned in section seven, it shall not exceed fifty dollars.

Fine and imprisonment, how effected. SEC. 10. Fines and imprisonment shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds therefor. Imprisonment shall be effected by a warrant under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the clerk of the house, running in the name of the territory, and directed to the sheriff of the proper county; and under such warrant, the officer of the house, sheriff and jailer will be authorized to arrest and detain the person.

Fines, how collected. SEC. 11. Fines shall be collected by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the territorial treasury.

SEC. 12. Punishment for contempt, as in this chapter provided, is no bar to any other proceeding, civil or criminal, for the same offense. Punishment no bar.

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CHAPTER XXXII.

LIBRARY.

SECTION 1. There shall be a territorial librarian, who shall be elected at the general election held in the year 1866, and every two years thereafter, who shall hold his office for two years, and until his successor is elected and qualified. Territorial librarian to be elected. Term of office.

SEC. 2. It shall be the duty of the librarian to receive and transfer all books sent by the general government, states or territories, to the territorial library, from the post office or other depot to which they may have been consigned, and to properly label and store them in the library. To receive and label books.

SEC. 3. The librarian shall cause the receipt of all books or other documents which may come into his possession for the use of the library, to be acknowledged; and shall keep a record of all books so received, and report the same, together with a full statement of the condition of the library, to the legislative assembly, at its regular annual sessions. To acknowledge receipt and keep record of books, and report to legislature.

SEC. 4. It shall be the duty of the librarian to issue books upon the order of the chief justice or either of the associate justices of the territory, or upon the order of the governor or secretary of the territory: *Provided*, That in each case, said justices, governor or secretary shall become responsible to the territory of Nebraska, for the return of said books in as good order as when they may have been taken from the library; and if any damage be done said books, or they be lost, the librarian shall estimate the amount of damage or value of said books, and if necessary, recover the same either of the party authorizing the loan Books, how issued. Governor, etc., responsible for damage.

of said books, or of the party receiving them, by a civil process in the name of the territory of Nebraska.

Keeping book belonging to library, in possession, etc.

SEC. 5. Any person who shall keep in his or her library, or in his or her possession, any book belonging to the territorial library, and shall fail to notify the territorial librarian of the fact of said book being in his or her possession, shall be deemed guilty of a misdemeanor, and shall be liable to indictment and prosecution for said offense; and upon conviction thereof before any court having competent jurisdiction, shall be fined not less than ten dollars nor more than twenty-five dollars.

Penalty.

Fines, how applied.

SEC. 6. All fines or sums received for damages to books, or for value of books lost, and accruing under the provisions of this chapter, shall be expended, under the direction of the governor of this territory, for the purchase of books for the use of the library.

Shall keep file of newspapers.

SEC. 7. It shall be the duty of the librarian to keep a file of all weekly newspapers published in the territory, at the expense of the territory.

Salary.

SEC. 8. The salary of the territorial librarian shall be four hundred dollars per annum, to be paid quarterly by the warrant of the auditor upon the treasury.

Territory shall furnish room for library, in which it shall be kept.

SEC. 9. The territory of Nebraska shall furnish a room suitable for the territorial library, in which said library shall be kept: *Provided*, That the territory shall pay no rent for said office.

At what hours library to be kept open.

SEC. 10. It shall be the duty of the territorial librarian to keep said office open from the hours of 10 o'clock A. M. until 12 o'clock M., and from 2 o'clock P. M. until 4 o'clock P. M., on each day throughout the year, Sundays and holidays excepted.

Unlawful to take and carry away from capitol building, books, laws, records, etc.

SEC. 11. It shall be unlawful for any person or persons to take and carry away from the capitol building, wherein is kept the territorial library, any book, books, laws, records, or other public document from the archives of the public librarian, except as provided for in section four of this chapter.

Person offending, guilty of misdemeanor. Penalty.

SEC. 12. Any person or persons so offending against the provisions of this chapter, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than ten dollars nor to exceed one thousand dollars.

CHAPTER XXXIII.

MARKS AND BRANDS.

Marks and brands to be recorded.

SECTION 1. Every person having cattle, hogs and sheep, shall have a mark or brand, different from the mark or brand of his neighbors, and he shall deliver to the county clerk a description of his mark or brand, and such clerk shall record the same in a well-bound book kept by him for that purpose.

No person to adopt brand previously recorded, etc.

SEC. 2. No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

But the one brand to be used

SEC. 3. No person shall use more than one mark or brand for his stock, nor use any other than the one recorded.

Mark or brand to be decided by record.

SEC. 4. Every person shall mark or brand all his hogs or sheep over six months old, and his cattle over twelve months old, and if any dispute arise about the question of whose any mark or brand may be, the same shall be decided by the record of the county clerk.

Person having brand recorded, already recorded, penalty.

SEC. 5. If any person shall willfully and knowingly have a mark or brand recorded, which is already recorded to another person in the same county, he shall be fined not less than twenty dollars nor more than one hundred dollars.

If clerk record, penalty.

SEC. 6. If any county clerk shall record the same mark or brand to more than one person, he shall forfeit and pay, to the use of the county, a fine not exceeding one hundred dollars.

Misbrand, etc., penalty.

SEC. 7. Every person who shall willfully and with intent to defraud, misbrand or mismark any stock not his own, shall forfeit and pay for every such offense not less than twenty dollars nor exceeding one hundred dollars.

Defacing mark of another, penalty.

SEC. 8. If any person alter or deface the mark or brand of any other person, for every head of stock whose mark or brand shall be thus altered or defaced, he shall forfeit not exceeding one hundred dollars.

CHAPTER XXXIV.

MARRIAGE.

Marriage a civil contract.

SECTION 1. In law, marriage is considered a civil contract, to which the consent of parties capable of contracting is essential.

Age of parties.

SEC. 2. At the time of the marriage the male must be of the age of eighteen years or upwards, and the female of the age of sixteen years or upwards.

When marriages are void.

SEC. 3. Marriages are void—

First. When one party is a white person and the other is possessed of one-fourth or more negro blood.

Second. When either party has a husband or wife living at the time of marriage.

Third. When either party is insane or an idiot, at the time of marriage.

Fourth. When the parties stand in the relation to each other of parents and children, grandparents and grandchildren, brother and sister, of half as well as whole blood, uncle and niece, aunt and nephew; and this subdivision extends to illegitimate as well as to legitimate children and relatives.

License.

SEC. 4. Previous to the solemnization of any marriage in this territory, a license for that purpose must be obtained from the probate judge of the county wherein the marriage is to take place.

If minor, consent of parents, etc. required.

SEC. 5. When either party is a minor, no license shall be granted without the verbal consent, if present, or written consent, if absent, of the father, if living, if not, then of the mother, of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

Judge to take testimony as to surname, residence, etc.

SEC. 6. When application shall be made for a license, the probate judge shall, by the testimony of some competent witness or of the applicant, ascertain the christian and surname of the parties, their respective places of residence, that they are of sufficient age to be capable in law of contracting marriage, and whether there be any legal impediment to the parties entering into the marriage contract; and he shall enter the facts so ascertained, and the date of the license, in a book to be kept by him for that purpose.

If parties incompetent etc., judge shall refuse.

SEC. 7. If, on such testimony being given, it shall appear that either of the parties is legally incompetent to enter into such contract, or that there is any impediment in the way, or, if either party is a minor, and the consent mentioned in section five shall not be given, the said judge shall refuse to grant a license.

Who may perform ceremony.

SEC. 8. Every judge and justice of the peace, and every licensed or ordained preacher of the gospel, may perform the ceremony of marriage in this territory.

Form.

SEC. 9. In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife; and in any case there shall be at least two witnesses beside the minister or magistrate, present at the ceremony.

Certificate to be given to parties.

SEC. 10. Whenever a marriage shall have been solemnized, pursuant to the provisions of this chapter, the minister or magistrate who solemnized the same, shall give to each of the parties, on request, a certificate, under his hand, specifying the names, ages and places of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place thereof.

What to specify.

Certificate to be delivered to judge of probate.

SEC. 11. Every person having authority to join others in marriage, shall, within three months after the solemnization of any such marriage, make and deliver to the probate judge of the county in which the marriage took place, a certificate containing the particulars mentioned in the preceding section.

Record.

SEC. 12. The probate judge of each county in the territory shall record all such returns of such marriage in a book to be kept for that purpose, within one month after receiving the same.

Neglect to comply with

SEC. 13. If any justice, minister, or other person whose requirements of law by minister, judge, etc.

Penalty.

duty it is to make and transmit to the probate judge such certificate, shall neglect to make and deliver the same; or if the probate judge shall neglect to record such certificate; or if any person shall undertake to join others in marriage, knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage; or if any person authorized to solemnize any marriage, shall willfully and knowingly make a false certificate of any marriage to the probate judge; or if the said probate judge shall willfully and knowingly make a false record of any certificate of marriage to him made; he shall be deemed guilty of misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the discretion of the court.

Marriage not to be adjudged void on account of want of jurisdiction of officer, etc.

Proviso.

SEC. 14. No marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed justice or minister: *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Every religious society may marry according to rites of such society.

Who shall transmit certificate to judge.

SEC. 15. It shall be lawful for every religious society to join together in marriage such persons as are of the said society, according to the rites and customs of such society, to which they belong; the clerk or keeper of the minutes, proceedings or other book of the religious society wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the probate judge of the county, a certificate of the marriage, and the same shall be recorded in like manner as is provided in the preceding section of this chapter.

Certificate to be received in evidence.

SEC. 16. The original certificate and record of marriage made by the minister, officer or person, as prescribed in this chapter, and the record thereof, made as prescribed, or a copy of such record duly certified by such officer, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Marriage contracted out of territory, when valid

SEC. 17. All marriages contracted without this territory, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this territory.

CHAPTER XXXV.

MECHANICS' LIEN.

What persons shall have lien.

SECTION 1. Any person who shall perform any labor, or furnish any material or machinery, for the erection, reparation or removal of any house, mill, manufactory, or other building, or appurtenance, by virtue of a contract or agreement, expressed or implied, with the owner thereof or his agent, shall have a lien to secure the payment of the same, upon such house, mill, manufactory, or other building, or appurtenance, and the lot of land upon which the same shall stand.

When owner shall retain amount of wages, etc., of workmen, etc., out of subsequent payments to contractors.

SEC. 2. Every mechanic or other person doing or performing any work or furnishing any material for the erection, reparation or removal of any house, mill, manufactory, or other building or appurtenance, erected, repaired or removed, under a contract or agreement, express or implied, between the owner thereof or his agent, and the builder or other person, whether such work shall be performed or material furnished as journeyman, laborer, carman, sub-contractor, or otherwise, whose demand for work so done or materials so furnished has not been paid, may deliver to the owner of such building or his agent an attested account of the amount and value of the work and labor thus performed, or the materials thus furnished, and remaining unpaid; and thereupon such owner or his agent shall retain, out of his subsequent payments to the contractors, the amount of such work and labor or material furnished, for the benefit of the person so performing or furnishing the same.

Duty of owner to furnish contractor copy of accounts of workmen, etc.

SEC. 3. Whenever any account of labor performed or materials furnished as referred to in the preceding section, shall be placed in the hands of the owner of any building or his agent, as above stated, it shall be the duty of such owner or agent to furnish his contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor, they may, by amicable adjustment, or by arbitration, ascertain the true sum due; and if the contractor shall not, within ten days after the receipt of such papers, give the owner or his agent written notice that he intends to dispute the claim, or if, in ten days after giving notice, he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or his agent shall pay the same when it becomes due.

When contractor considered as assenting to demand.

When and how disputed claim submitted to arbitrament

SEC. 4. If the contractor shall dispute the claim of his journeyman or other person for work done or materials furnished as aforesaid, and the matter cannot be adjusted by themselves, it shall be submitted to the arbitrament of three disinterested persons, one to be chosen by each of the parties and one by the two thus chosen, and the decision of any two of them shall be conclusive in the case submitted.

When contractor fails to pay sum adjusted by arbitrators, owner may pay.

SEC. 5. When the account shall be adjusted as above provided, and the contractor shall not, within ten days after it is so adjusted, pay the sum to his creditors with the costs incurred, the owner or his agent shall pay the same out of the fund as above provided; and which amount due may be recovered from said owner by the creditor of said contractor, in an action at law, and to the extent in value of any balance due by the owner to his contractor under the contract with him at the time of the notice first given as aforesaid, or subsequently accruing to such contractor, under the same, if such amount shall be less than the sum due from said contractor to his creditor.

How balance, if any, may be recovered.

SEC. 6. If by collusion or fraud the owner of any building erected by contract as aforesaid, or his agent, shall pay to his contractor any money in advance of the sum due on said contract, and if the amount still due the contractor after such payment has been made, shall be insufficient to satisfy the demand made in conformity with the provisions of this chapter, for labor done or materials furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work or materials, in the same manner as if no such payment had been made.

Liability of owner who pays contractor in advance by collusion or fraud.

Proceedings to create a lien.

SEC. 7. Any person entitled to a lien under this chapter shall make an account in writing of the item of labor, skill, machinery, and material furnished, or either of them, as the case may be, and after making oath thereto, shall, within four months from the time of performing such labor and skill, or furnishing such machinery and material, file the same in the county clerk's office of the county in which such labor, skill and materials shall have been furnished, which account so made and filed shall be recorded in a separate book to be provided by the clerk for that purpose, and shall, from the commencement of such labor or the furnishing such materials, and for two years after the completion of such labor or the furnishing of such materials, operate as a lien on the several descriptions of structures and buildings, and the lots on which they stand, in the first section of this chapter named. When any labor has been done or materials furnished as provided, on a written contract, the same or a copy thereof shall be filed with the account herein required.

Persons holding lien may obtain judgment by civil action, and liens shall continue until determination of suit.

SEC. 8. Every person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

When laborers, machanics and furnishers may inclose building to prevent waste.

SEC. 9. When the owner or owners of any house or building, or his or their agents, as described in this chapter, shall suspend its progress or completion without the consent of such laborers, mechanics and furnishers, or if the progress or completion of the same be suspended by the decease of the owner or owners, at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics and furnishers thereto, or any of htem, may, at their election, proceed with the same at their own costs, so far as to inclose such building, and thereby prevent such waste: *Provided*, The work so done after said suspension shall be according to the contract, and the plan of the owner or owners.

When court may direct building to be leased until rent shall satisfy liens.

SEC. 10. If the person or persons who may erect as owner or owners any building described in the first section of this chapter, be not at the suspension or completion of the same, possessed of the legal, but equitable title to the ground on which the same is erected (if the same be a fixture) and the fact of such defect of title be made to appear to the court before any judgment or judgments under this chapter may have been obtained; or if the same be returned by any legal officer to whom any execution under this chapter shall be directed; in either case, the court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building until the rents and issues thereof shall pay and satisfy the several liens on which judgments may be had against the same: *Provided*, This law shall not be so construed as to interfere with prior *bona fide* liens on grounds on which such building shall be erected as a fixture.

Same.

SEC. 11. In all other cases of judgment or judgments obtained in favor of any lien holder or holders, if the property bound by such lien will not sell on execution, as provided by law in other cases, having been once duly offered, the court before whom such judgment or judgments may be obtained, may direct the officer aforesaid to lease the same, in the same manner and for the same purpose pointed out in the preceding section, and the officer giving such lease shall therein require the payment to be made to him or his successors in office, which successor or successors shall have the same power and perform the same duties therein as the maker of the lease should or could do; and in cases where the money may be collected by said officer, on a lease made under this chapter, it shall be his duty forthwith to pay the same into court, where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgments, in proportion to their several demands.

When and how liens may be discharged.

SEC. 12. All liens may be discharged by the payment of judgment or debt, with all legal costs, before the property on which such liens attach be sold or leased under this chapter; and if any lien holder or holders, after the same be duly tendered to him or them, shall proceed at law, or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all lien and pay all costs.

Proceedings where owners of property subject to lien are out of reach of process.

SEC. 13. If the owner or owners of the property which is subject to a lien under this chapter, be without the reach of process, or resident without the terrritory, any lien holders may proceed by attachment against the same as in other cases; and the court before whom the same attachment is pending, on the entry of judgment on return of the proper officer, shall have the same power to order a lease as is given in the tenth and eleventh sections of this chapter.

Executors, etc., to have same right as testator, etc., when living.

SEC. 14. Executors and administrators under this chapter shall have the same rights and be subject to the same liabilities that their testator or intestate would or might have if living.

Fees for filing and recording contracts.

SEC. 15. The county clerks, for filing and recording contracts and accounts under this chapter, shall be paid the same fees that they are legally entitled to in other cases.

When and how lien to be removed.

SEC. 16. Each and every person in favor of whom any such lien has existed, after having received satisfaction of his debt, or after final judgment against him by a competent tribunal, showing that nothing is due by reason of such claims, shall, at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his or their legal representatives, lodge a certificate with said clerk that said debt is satisfied, and said lien removed; which certificate shall be filed, and recorded by the clerk on the margin of the record in the same manner that releases of mortgages are now by law required to be recorded, and when so recorded shall forever discharge and release said lien; and if such person, having received such satisfaction as aforesaid by himself or attorney, or judgment having been rendered against him as aforesaid, shall not, within ten days after request in writing, lodge a notice in writing with the clerk as is prescribed in this section, he or they neglecting or refusing so to do, shall forfeit and pay to the party or parties so aggrieved, any sum of money not exceeding one-half the debt claimed as a lien on such property according to the circumstances of the case, to be recovered by civil action; and the party lodging such certificate as aforesaid shall pay to the clerk twenty-five cents for recording each notice or certificate as aforesaid.

Penalty if person having received satisfaction, fail to discharge lien.

In addition to remedy herein provided, party may proceed in chancery.

SEC. 17. Any person who shall hold a lien under the provisions of this chapter, may, in addition to the remedy herein provided for, proceed by petition in chancery as in other cases of liens, against the owner or owners of, and all other persons interested, either as lien holders or otherwise, in any such house, mill, manufactory or other building or appurtenance in the first section of this chapter mentioned, and the lot or lots of lands on which the same shall stand, and obtain such final decree therein for the rent or sale thereof as justice and equity may require, anything in this chapter to the contrary notwithstanding.

CHAPTER XXXVI.

MILLS AND MILL-DAMS.

Proceeding where person desires to erect a mill-dam from land on one side of stream.

SECTION 1. If any person owning lands on one side of a water-course, and the bed thereof, either by legal or equitable title, desires to erect a dam across such water-course, for the purpose of building a water-grist, saw, carding, or fulling mill, or of erecting any machinery on such land to be propelled by water, and does not own the land on the opposite side of such water-course against or on which he would abut his dam, he may make application for a writ of *ad quod damnum* to the district court of the county where such lands lie, specifying in such application the ground and object thereof.

Clerk to issue writ to sheriff, who shall summon twenty-four freeholders.

Subsequent proceedings.

SEC. 2. Such court may thereupon order the clerk to issue such writ, to be directed to the sheriff, commanding him to make out a list of twenty-four disinterested freeholders of the county, and return the same to the clerk of such court, and after not less than ten days notice to both parties to appear in the office of said clerk at a day and hour to be by said sheriff stated in said notice, and then and there in the presence of said clerk to strike out alternately one name from said list until but twelve remain, to summon and empanel the said twelve remaining free-holders to meet on the land so proposed for the abutment, on a certain day to be named by the court and inserted in said writ, of which meeting ten days previous notice to the proprietor of such land shall be given, if to be found in the county, and if not, then to his agent, if any he have in such county, or if there be no such agent, then to be advertised at the door of the court-house of the proper county for two terms of such court.

Duties of jurors.

SEC. 3. The jury so summoned and empanneled, after being sworn, shall be charged by the sheriff, impartially, and to the best of their skill and judgment —

First. To view the land proposed for an abutment, and to locate and circumscribe by metes and bounds one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value.

Second. To examine the lands above and below, the property of others, which may probably be overflowed or injured, and say what damage it will be to the several proprietors, naming them, and whether the mansion house of any such proprietor, or proprietors, or the offices, curtilages, or gardens thereunto immediately belonging, will be overflowed or injured.

Third. To inquire whether, and in what degree, fish of passage, or ordinary navigation, will be obstructed, and whether, in their opinion, the health of the neighborhood will be annoyed by the stagnation of the water.

Fourth. Whether, and by what means, any such obstruction, annoyance or injury can be prevented.

Finding of jury to be returned to clerk.

SEC. 4. The inquest so made and signed by said jurors, together with the writ, shall be forthwith returned by the sheriff to the office of the clerk of such court, and said sheriff shall thereupon give notice thereof in writing to the several persons, proprietors or tenants of the land so located or found liable to damage or injury, if such persons be found within the county where the lands so to be condemned, overflowed or injured, lie, and if not, then to their agents, if any they have, to show cause why the party so applying should not have leave to build his said mill-dam.

Notice to land-holders.

Where person owns land on both sides of water-course.

SEC. 5. If the person proposing to build any such mill and dam shall own the lands on both sides of the water-course, application may be made in like manner to the district court of the county where the mill-house will stand, for a writ to examine, as aforesaid, what lands may be overflowed or injured, and to make the same examination, assessment of damages, and report so far as the same is necessary, as in the case first mentioned in this chapter; which writ shall be directed, executed and returned, and notice given to the proprietors or their agents, as prescribed in the former case.

Proceedings where mills and dams have already been erected.

SEC. 6. When any person shall have erected a mill and mill-dam on his own lands, whereby the waters of any river, creek or spring of another shall be overflowed or affected, or his lands or tenements or any appurtenances thereof shall be injured, the person who erected such mill and mill-dam may prosecute a writ of *ad quod damnum*, as provided in the first, second, third and fourth sections of this chapter, so far as the same are applicable.

SEC. 7. Such jury shall be summoned, and such inquest conducted and returned, and notice given, as on an application in the case of erecting a new mill.

Damages.

SEC. 8. Such jury, if they find such mill to be of public utility, shall examine and take into consideration the damages in the premises, and shall assess such amount therefor as the party injured or affected may have sustained and will sustain by the erection and continuance of such mill-dam.

Of applications after erection of mill-dam.

SEC. 9. In case of any such application by any person after having erected the mill-dam, no damages shall be allowed, and the application shall be dismissed, unless the case be such that leave would have been given to build a mill if such application had been filed before the erection of the mill-dam.

Persons interested or injured may institute proceedings.

SEC. 10. Where any person may have built a mill or other dam, whereby the water of any river, creek, run or spring may be rendered stagnant, or any lands shall be overflowed or injured thereby, it may be lawful for any person interested therein, or who may be damaged by the stagnation or overflowing of said water or otherwise, to obtain a writ of *ad quod damnum* in the same manner as is directed in the case of persons wishing to build a new mill, having first given the owner of such mill ten days previous notice of the application for such writ.

Damages.

SEC. 11. The jury so summoned shall ascertain the damages which such applicant has sustained, and may sustain, in consequence of the erection and continuance of the said mill-dam, and shall inquire whether the said mill is of public utility; and after the inquest of such jury shall have been returned, and it has been confirmed by the court, such owner or owners of the said mill shall pay to such applicant the sum assessed by the jury aforesaid; and upon payment of said assessment, if the mill was found by the jury to be of public utility, the said owner or owners shall be exonerated from all future damages to such applicant.

Persons interested may appear and traverse the cause.

SEC. 12. Any person interested in or affected by any inquest provided for in this article, may appear and traverse any material fact therein stated, or he may plead or show any valid matter in bar of the right of the applicant to have the benefit of such writ; and issues of law and of fact may be made up and tried, and the court may adjudge costs therein, as in actions at common law.

Court may permit

SEC. 13. The court may permit amendments of the proceedings, and may set aside, for sufficient cause, any such amendments or set aside inquests, or ratify same. inquest, and award another writ, upon payment of all costs by the applicant, or may dismiss the proceedings, or the court may ratify and confirm such inquest.

Court may issue execution for damages. SEC. 14. The court may render judgment and issue execution for any amount of damages assessed by such jury against any such person owning or wishing to build any mill or mill-dam, as specified in this chapter, in favor of the party entitled to such damages, if desired by the party thus entitled.

In what cases leave shall not be granted to erect a mill and dam. SEC. 15. If in the case of an application provided for in the first and fifth sections of this chapter, it shall appear on such inquest or other evidence to the court that the mill or appurtenances thereto belonging, or the mansion house of any proprietor, or curtilage, or garden thereunto immediately belonging, will be or has been overflowed or injured, or the health of the neighborhood annoyed, they shall not give leave to build such mill and dam; but if none of those injuries have accrued nor will likely accrue, they shall proceed to adjudge whether under all the circumstances it be reasonable that such leave be given or not given.

Of the title to the one acre of land condemned. SEC. 16. If the party applying shall obtain leave to build the said mill and dam, he shall, upon paying respectively to the several persons entitled, the value of the acre so located, and the damages which the jurors may assess on the inquest aforesaid, become seized in fee simple of the said acre of land; but if he shall not, within one year after the decision of the court, begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or, in case the said mill and dam or either of them be destroyed, if he shall not begin to rebuild the same within one year after such destruction, and finish the erection thereof within three years thereafter, the said acre of land shall revert to the former proprietor and his heirs, unless at the time of such destruction the owner of such mill be a femme covert, an infant, imprisoned, or of an unsound mind; in which case, the length of time above specified shall be allowed after such disability shall be removed.

Payment of damages under this SEC. 17. Any assessment of damages in pursuance of the provisions of this chapter, when the same shall be fully paid and satisfied, after confirmation of such assessment by the court, shall bar a recovery for any damages or injury sustained previous or subsequent to such inquest in any and every action at law.

chapter to be a bar to all subsequent actions.

Where any of the land owners are infants, court shall appoint guardian *ad litem.*

SEC. 18. When any application is made as provided in the first or fifth section of this chapter, and any of the proprietors to be affected thereby shall be infants, such proceedings and inquisitions shall be conducted and returned in all respects as if such infants were of full age, but the court shall not proceed further in such application until some discreet person not of kin to the applicant shall be appointed by the court as guardian *ad litem* for such infants.

Guardian to appear for such infant.

SEC. 19. Such guardian *ad litem* shall appear and defend for such infants, but no confession, admission, or default of such guardian, shall prejudice or affect the rights of such infants.

Owner of mill may erect embankments on lands of others in certain cases.

SEC. 20. When the water backed up by any mill-dam belonging to any mill or machinery, is about to break through or over the banks of the stream, or to wash a channel so as to turn the water of such stream, or any part thereof, out of its bed or ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such bank or banks, or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments, fortifications, and other works as shall be requisite to prevent such water from breaking through or over the bank or banks of such stream, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage.

Mill owner liable to damages under preceding section.

SEC. 21. Nothing contained in the last preceding section shall be construed to bar the owner of such bank or banks, or land lying contiguous thereto, from recovering the amount of any injury which he may have actually and in fact sustained by the erection or repair of such embankment, fortification or other works.

Persons removing embankment liable to damages.

SEC. 22. If any person shall injure, destroy or remove any such embankment, fortification, or other works, the owner or occupier of such mill or machinery may recover of such person all damages which he may sustain by reason of such injury, destruction or removal.

All mills for grinding wheat, etc., for toll, shall be deemed public mills.

SEC. 23. All mills within this territory now in operation, or which hereafter may be put in operation, for grinding wheat, rye or corn, or other grain, and which shall grind for toll, shall be deemed public mills.

How and when owner to grind grain.

SEC. 24. The owner or occupier of every public mill within this territory shall grind the grain brought to his mill, as well as the nature and condition of his mill will permit, and in due time as the same shall be brought.

Rates of toll to be posted.

SEC. 25. The owner or occupier of every public mill shall cause a statement of the rates of toll, by him charged for grinding and bolting the different species of grain, to be posted in at least two conspicuous places within the mill, and such statement shall either be written or printed in a plain and legible manner.

Half bushel and toll dishes to be kept.

SEC. 26. He shall keep in his mill an accurate half-bushel measure and an accurate set of toll dishes.

Accountability for safe keeping of grain.

SEC. 27. He shall be accountable for the safe-keeping of all grain received in his mill, for the purpose of being ground, with the bags or casks containing the same, and shall, when required, deliver the same or the flour or meal thereof to the owner, or his or her agent, or order, or servant, with the bags or casks in which the same was received: *Provided*, That such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name, nor for the loss of grain, bags or casks which shall happen by unavoidable accident.

Penalty for taking too much toll, and violation of provisions of this chapter.

SEC. 28. Any owner or occupier of any public mill, who shall, by himself or agent, or servant, take a greater rate of toll than that inserted in the statement required in section twenty-five, or shall in any manner fail to comply with the provisions and requirements of this chapter, shall forfeit to the party injured the sum of twenty dollars, which penalty may be sued for and recovered before any court of this territory having jurisdiction thereof.

How owner may change public mill into private one.

SEC. 29. Any owner or occupier of any public mill may, by giving thirty days notice in writing, change such public mill into a private one; such notice shall be posted on the mill, and in at least two other conspicuous places within the county: *Provided, however*, That such mill shall no longer grind for toll after expiration of the date of said notice.

CHAPTER XXXVII.

MONEY.

Money is dollar, cent and mill.

SECTION 1. The money of account of this territory, is the dollar, cent and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

Demands of another denomination not affected.

SEC. 2. The above provisions shall not in any manner affect any demand expressed in money of another denomination, but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

DISBURSEMENT OF MONEY APPROPRIATED BY THE LEGISLATURE.*

Officer entrusted with funds appropriated by legislature to give bond.

SEC. 3. Any officer or person who is entrusted with funds belonging to the territory of Nebraska, which may be appropriated by the legislative assembly, either for specific or general purposes, shall give a bond for the faithful performance of his duty, under this subdivision, with good and sufficient securities, in twice the amount of the sum so appropriated, and said bond shall be approved by the chief justice of the supreme court of the territory, and filed in the office of the territorial auditor; and the territorial auditor shall not issue any warrant for any money appropriated as hereinbefore specified, until said bond shall have been approved and filed as aforesaid.

Shall keep a strict account, and take vouchers.

SEC. 4. The officer or other person so entrusted with moneys, shall keep a strict account of his disbursements, and shall take vouchers in duplicate for all moneys paid out by him, and shall make a rendition of his accounts

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* Act approved February 12, 1866.

Shall report to legislature. annually to the legislative assembly of the territory, within ten days after the commencement of its session.

CHAPTER XXXVIII.

NOTARIES PUBLIC.

Governor authorized to appoint. SECTION 1. The governor is hereby authorized, subject to all the restrictions of this chapter, to appoint and commission notaries public in the several counties in this territory, who shall hold the office for the term of six years, unless sooner removed. Term of office.

Commission to be sent to clerk of district court. SEC. 2. When any person is appointed to be a notary public, the governor shall sign the commission of such person, and deliver the same to the secretary of the territory, and the secretary shall direct and send the commission, together with a bond to be executed by the person appointed, to the clerk of the district court of the district wherein such person resides, and the clerk of the district court shall, within five days after receiving the same, notify the person appointed that he has received and holds the commission and bond; and if the person appointed does not appear before the clerk and execute the bond within thirty days after the date of the notice aforementioned, the clerk shall return the commission and bond to the secretary of the territory.

Notary to sign bond and take oath. SEC. 3. Each person appointed to the office of notary public shall, within the time limited in section two, appear before the clerk of the district court, and execute and deliver a bond to the territory of Nebraska, in the sum of two thousand dollars, with security to be approved by the clerk, conditioned for the faithful performance of the duties of his office, and shall make oath or affirmation before the clerk that he will support the constitution of the United States, and the organic law of this territory, and that he will faithfully and impartially discharge and perform all the duties of his office, and this oath shall be endorsed on the commission and subscribed in the presence of the clerk; and the clerk shall preserve the bond in his office, and record the commission and oath in a book to be by him kept for that purpose, and shall send to the secretary of the territory a written notice that the requirements of the law are complied with, which notice the secretary shall preserve in his office.

Clerk to make record of commission and oath, and send notice thereof to secretary.

SEC. 4. Each notary public, before entering upon the duties of his office, shall provide himself with an official seal, with which he shall authenticate all his official acts, upon which seal shall be engraven the words "notarial seal," and the name of the county wherein he resides, and the word "Nebraska;" and shall also provide himself with an official register, wherein he shall record all his official acts required by law to be recorded; and the seal and register of a notary public shall not be levied on or sold.

Notary to provide seal and register.

SEC. 5. Every notary public so appointed, commissioned and qualified, is hereby authorized and empowered, within the county wherein he resides, and for which he was appointed and commissioned, to administer oaths and affirmations, to take depositions, to receive acknowledgments of deeds, mortgages, powers of attorney, and other instruments in writing, to demand acceptance and payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require; and to exercise such other powers and duties as by the law of nations and according to commercial usage, or by the laws of any other territory, state, government or country, may be exercised and performed by notaries public.

Powers of notary.

SEC. 6. In all the courts within this territory the certificate of a notary public over his hand and official seal, shall be received as presumptive evidence of the facts contained in such certificate: *Provided*, That any person interested as party to a suit may contradict, by other evidence, the certificate of a notary public.

Certificate of notary presumptive evidence, but may be contradicted

SEC. 7. Each notary public shall record in his official register the date of every acknowledgment made before him; the name or names of the grantor or grantors; the name or names of the grantee or grantees, and the word

What to be recorded by notary.

"deed," "mortgage," power of attorney," or other word or words indicating the nature of the official act; and shall record, in a comprehensive manner, together with a copy of every bill of exchange, promissory note, or obligation received by him for demand and protest, his official act and the date thereof, stating specifically the name of each drawer or endorser notified, and the place where notice was delivered or to which notice was sent.

Power to to issue summons to command attendance of witnesses

SEC. 8. Every notary public, when notice, by a party to any civil suit pending within this territory, upon an adverse party, for the taking of depositions, has been deposited with him, or when a special commission issued out of any court of record without this territory, together with a notice for the taking of depositions, has been deposited with him, is empowered to issue summons and command the presence of witnesses, and to punish witnesses for neglect or refusal to obey his summons, or for refusal to testify when present, by commitment to the jail of the county for contempt; and all sheriffs and constables in this territory are hereby required to serve and return all process issued by notaries public, in the taking of depositions.

Sheriffs and constables required to serve process of notary.

Who forbidden to hold the office.

SEC. 9. No banker or broker, nor any officer, salaried attorney, stockholder; clerk or agent of any bank, banker or broker, shall be appointed to or shall hold the office of notary public in this territory.

Person injured may maintain civil action.

SEC. 10. If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public, the person damaged or injured may maintain a civil action, on the bond of such notary public, against such notary public and his sureties; and a recovery in such action shall not be a bar to any future action for other cause, to the full amount of the bond.

Where register to be deposited in case of death or expiration of term of office.

SEC. 11. Each person who has held the office of notary public shall, within thirty days after the expiration of his term of office, or his removal from office, or his removal from the county, deposit his official register with the clerk of the district court for the county, who shall preserve the same, and in case of the death of a person holding the office of notary public, his executor or administrator shall, within thirty days after his decease, deposit his official register with the clerk; and any person who shall neglect or fail to fulfill and perform the duty prescribed in this section, shall be liable in the penal sum of two hundred dollars, to be applied to the school fund of the county, which sum may be recovered by any citizen of the county suing therefor.

Penalty for neglect.

SEC. 12. If any clerk of the district court shall neglect or fail to fulfill and perform the duties imposed on him by this chapter, such person shall be liable in the penal sum of two hundred dollars, to be recovered and applied as provided in section eleven.

Neglect of clerk to perform duties, penalty.

SEC. 13. No deed, mortgage, power of attorney, or other instrument in writing, heretofore executed and acknowledged before a notary public, and no certificate of an official act of any notary public within this territory, shall be held invalid or defective because the official seal of the notary certifying thereto contained the initial or abbreviation of any name or word, or different words from those required to be contained or engraven on the seal of the notary public.

Instruments not to be held invalid on account of certain omissions in seal.

SEC. 14. Hereafter the number of notaries public shall be limited, and there shall not be more than twelve in each of the counties of Douglass, Cass and Otoe; and eight in each of the counties of Richardson, Nemaha, Washington and Sarpy; and six in each of the other counties in this territory; and if by error any person may be appointed to the office when there is already the lawful number in the county for which such person is appointed, it shall be the duty of the clerk of the district court, when the commission for the person appointed is received by him, to return the same to the secretary of the territory, with information of the fact.

Number of notaries in each county

SEC. 15. The secretary shall be entitled, for receiving and forwarding the commission of a notary public, to the sum of one dollar, and the clerk of the district court, for giving notice and recording the commission and oath, to the sum of two dollars, to be paid by the person appointed.

Fees of secretary and clerk of district court.

CHAPTER XXXIX.

OATHS AND AFFIRMATIONS.

By whom oaths and affirmations may be administered.

SECTION 1. Oaths and affirmations may be administered in all cases whatsoever, by judges of the supreme court, judges of the district courts, clerk of the supreme court, clerks of the district courts within their respective districts, and by probate judges, justices of the peace, and notaries public, within their respective counties.

CHAPTER XL.

PAUPERS.

By whom poor persons to be supported.

SECTION 1. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they or either of them be of sufficient ability. And every person who shall refuse to support his or her father, grandfather, mother, grandmother, child or grandchild, sister or brother, when directed by the county commissioners of the county where such poor person shall be found, whether such relative shall reside in the same county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, the sum of ten dollars for each and every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, before a justice of the peace or any other court having jurisdiction: *Provided*, That whenever any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relative except parent or child.

Penalty for refusing to support certain relatives, when required by county commissioners.

Proviso as to paupers from intemperance or bad conduct

SEC. 2. The children shall first be called upon to support parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents nor children, the brothers and sisters shall next be called on, and if there be no brothers nor sisters, the grandchildren of such poor person shall next be called on, and then the grand parents: *Provided*, Married females, while their husbands live, shall not be liable to a suit.

Order in which relatives shall be called upon to support paupers.

SEC. 3. When any such poor person shall not have any such relatives in any county in this territory as are named in the preceding sections, or if such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

When no relatives, relief to be received from county treasury.

SEC. 4. The justices of the peace in each precinct shall be and they are hereby made overseers of the poor, and are vested with the entire and exclusive superintendence of the poor in their respective precincts, excepting in cases of corporate towns or cities to which such superintendence and jurisdiction shall be by law granted.

Who are overseers of the poor.

SEC. 5. It shall be the duty of said overseers of the poor, within their respective precincts, to provide for all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, or other unavoidable cause, the necessaries of life, and in their discretion may confide such poor persons to some moral and discreet householder or householders in the county, of sufficient ability to provide for them. Every person to whom the care of any such poor person shall be entrusted, shall execute a bond to the county in which such poor person shall reside, conditioned that he or she will treat such poor person with humanity, and afford to him or her the necessary comforts of life fitted to his or her condition; said bond shall set forth the sum to be paid by said county for keeping such poor person.

Duty of overseers of the poor.

Person taking charge of paupers, etc. to give bond to county.

SEC. 6. Said overseers shall, at each regular session of the board of county commissioners, make a full report of their actings and doings under this chapter, and return a

Overseers to report to county commissioners, and return list of poor.

list of all the poor within their respective precincts, specifying the age, sex and infirmities of each.

Commissioners to issue warrants in certain cases.

SEC. 7. Upon making such report, it shall be the duty of the county commissioners to issue their warrants or drafts on the treasurer, for the payment of the expense necessarily incurred by the overseers of the poor in supporting such poor person.

Bond may be lessened or increased at the discretion of commissioners.

SEC. 8. Any sum set forth in the bond executed to any county as aforesaid, may be lessened or increased at the discretion of the commissioners of said county, without affecting the validity of said bond.

Commissioners may remove person from custodian.

SEC. 9. The county commissioners may, at any regular meeting, remove any poor person from the custody of any person or persons to whose care the overseers may have committed the keeping of such poor persons, without subjecting the overseers or the county to any claim for damages.

Ability of poor to labor to be considered.

SEC. 10. The overseers, in fixing the amount to be paid for the keeping of any poor person, shall take into consideration the ability of the poor person to labor.

In what county pauper chargeable.

SEC. 11. Any person becoming chargeable as a pauper in this territory, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

Where pauper becomes chargeable in another county, to be taken care of, and clerk to send notice to proper county.

SEC. 12. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners to send a notice by mail to the clerk of the county commissioners of the county in which such pauper resided, as before stated, that such person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or her.

Where pauper cannot be removed,

SEC. 13. If said pauper, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she resides, or for any other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for and recover from the county to which said individual belongs, the amount expended for and in behalf of such pauper, and in taking care of the same.

to be taken care of, and proper county may be sued for charges.

County commissioners may extend aid to non-resident, or person not a pauper.

SEC. 14. Whenever any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his or her board, nursing and medical aid, it shall be the duty of the overseers of the poor of the precinct where such person shall be, to furnish such assistance to such person as they shall deem necessary; and if any such person shall die, said overseers shall provide all necessary means for a decent burial of such person.

What term "residence" considered to mean.

SEC. 15. The term residence, mentioned in this chapter, shall be taken and considered to mean the actual residence of the party or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held the place where he or she made it his or her home.

Penalty for bringing pauper into territory.

SEC. 16. If any person shall bring or leave any pauper or paupers in any county in this territory wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, before any justice of the peace in the proper county.

Commissioners authorized to establish poor house.

SEC. 17. The county commissioners in each county are authorized, whenever they shall see fit so to do, to establish a poor house.

May take land for that purpose.

SEC. 18. The county commissioners are hereby authorized to take to the county, by grant, devise or purchase, any tract of land not exceeding six hundred and forty acres, for the purposes of said poor house.

May receive donations and levy tax to establish poor house, etc.

SEC. 19. Said commissioners are hereby empowered to receive donations to aid in the establishment of such poor house, and also empowered from time to time, as they shall see fit, to levy and collect a tax, not exceeding one per cent. on the taxable property in the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable for a poor house, and to put into operation and to defray the actual expenses of said poor house, should the labor of the inmates be inadequate thereto.

May employ necessary agents.

SEC. 20. Said county commissioners are hereby authorized to appoint and employ such agents and other persons as may be necessary to establish and put into operation such poor house.

When establishment of poor house entered upon record, authority of overseers to cease.

SEC. 21. Whenever the county commissioners of any county shall enter upon their records, that they have established a poor house, and that said poor house is ready for the reception of the poor of said county, then the authority conferred upon the overseers of the poor shall cease to be in force in said county: *Provided, however*, That if there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

Title to be made to county.

SEC. 22. The title of the property authorized to be acquired by this chapter, for the purpose of said poor house, shall be made to the county.

What amount may be appropriated to purchase farm and erect buildings.

SEC. 23. The county commissioners of any county in this territory may, at any regular meeting, if they at any time shall deem it to the interest of said county, appropriate, out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor house for said county, as contemplated in sections seventeen, eighteen and nineteen of this chapter.

CHAPTER XLI.

PRECINCTS.

County commissioners to establish.

SECTION 1. Each board of county commissioners may divide the county into convenient precincts; and, as occasion may require, erect new ones, subdivide precincts already established, and alter precinct lines.

Change of, not to affect officers elected.

SEC. 2. When a precinct shall be divided, any justice of the peace or constable of the original precinct, shall continue to act as such, the same as if the precinct had not been divided.

Resignation of justices and constables.

SEC. 3. All resignations of justices of the peace and constables shall be in writing, and addressed to the county clerk.

CHAPTER XLII.

QUO WARRANTO AND MANDAMUS.

When private persons may file information.

SECTION 1. When any citizen of this territory shall claim any office which is usurped, invaded, or unlawfully held and exercised by another, the person so claiming such office, shall have the right to file in the district court an information in the nature of a *quo warranto*, upon his own relation, and with or without the consent of the prosecuting attorney, and such person shall have the right to prosecute said information to final judgment: *Provided*, He shall have first applied to the prosecuting attorney to file the information, and the prosecuting attorney shall have refused or neglected to file the same.

Private persons may sue out mandamus.

SEC. 2. Any private person may, on his own relation, sue out writs of mandamus, without application to the prosecuting attorney.

Persons suing out writs liable for costs.

SEC. 3. Persons suing out either of the writs under the provisions of this chapter, shall be liable to costs as in civil cases.

CHAPTER XLIII.

REAL ESTATE.

Witness to deeds required.

SECTION 1. Deeds of real estate or of any interest therein in this territory, except leases for one year or for a less time, must be signed by the grantor, being of lawful age, in the presence of at least one competent witness, who shall subscribe his name as a witness thereto, and be acknowledged or proved and recorded as directed in this chapter.

Acknowledgment.

SEC. 2. The grantor must acknowledge the instrument to be his voluntary act and deed.

By whom taken.

SEC. 3. The acknowledgment must be made or proved, if in this territory, before a judge or clerk of any court, or some justice of the peace, or notary public therein; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction.

If in any other state or territory.

SEC. 4. If acknowledged or proved in any other state or territory, or district of the United States, it must be done according to the laws of such state, territory or district, and must be acknowledged or proved before any officer authorized to do so, by the laws of such state, territory or district, or before a commissioner appointed by the governor of this territory for that purpose.

What authentication sufficient.

SEC. 5. In all cases provided for in section four of this chapter, (if such acknowledgment or proof is taken before a commissioner appointed by the governor of this territory for that purpose, notary public or other officer using an official seal,) the instrument thus acknowledged or proved, shall be entitled to be recorded without further authentication: *Provided*, That in all other cases, the deed or other instrument shall have attached thereto a certificate of the clerk of a court of record or other proper certifying officer of the county, district or state within which the acknowledgment or proof was taken, under the seal of his office, showing that the person whose name is subscribed to the certificate of acknowledgment, was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine, and that the deed or other instrument is executed and acknowledged according to the laws of such state, district or territory.

Foreign deeds.

SEC. 6. If such deed be executed in a foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

In case of death of grantor.

SEC. 7. If the grantor die before acknowledgment, or if for any cause his attendance cannot be procured in order to make the same, or, having appeared, he refuses to acknowledge it, proof of the execution and delivery of the deed may be made by any competent subscribing witness thereto before any officer authorized to take the acknowledgment; and the witness must state upon oath, his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge he had signed the same; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

Witnesses.

SEC. 8. The officer has power to issue the necessary subpœnas for the subscribing witnesses, residing in the same county, to appear before him for the purpose aforesaid.

Failure to appear, penalty.

SEC. 9. Every person who, being served with a subpœna, and having been tendered the fees of a witness in a justice's court, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured one hundred dollars; and may also be committed to prison by the officer who issued such subpœna, there to remain without bail until he shall submit to answer upon oath as aforesaid.

Absence or death of witness.

SEC. 10. If all the subscribing witnesses shall be dead, or out of the territory, such death or absence is first to be proved, and then the execution of the deed may be proved before such officer, by proving the handwriting of the grantor, and of any subscribing witness to such deed.

Copy of deed not acknowledged may be filed during proceedings; effect of.

SEC. 11. Any person interested in a deed that is not acknowledged, may, at any time before or during the proceedings before such officer, file in the office of the county clerk of the county where the lands lie, a copy of the deed, compared with the original by the clerk, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded.

Certificate of acknowledgment to be endorsed on deed.

SEC. 12. Every officer who shall take the acknowledgment or proof of any deed, shall endorse a certificate thereof, signed by himself, on the deed; and in such certificate shall truly and specifically set forth the matters hereinbefore required to be done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Certificate is evidence.

SEC. 13. Every deed acknowledged or proved, and certified by any of the officers before named, including the certificate specified in section five of this chapter, whenever such certificate is required by law, may be read in evidence without further proof, and shall be entitled to be recorded. The record of a deed duly recorded, or a transcript thereof duly certified, may also be read in evidence with the like force and effect as the original deed, whenever, by the party's oath or otherwise, the original is known to be lost, or not belonging to the party wishing to use the same, nor within his control. Neither the certificate of the acknowledgment, or of the proof of any deed, nor the record or transcript of the record of such deed, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a deed, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such deed, nor the record thereof, shall be received in evidence until established by other competent proof.

Certificate to be recorded.

SEC. 14. The certificate of the proof or acknowledgment of every deed, and the certificate of the genuineness of the signature of any officer, in the cases where such last mentioned certificate is required, shall be recorded, together with the deed so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such deed, nor the transcript thereof, shall be read or received in evidence.

Time of recording deed.

SEC. 15. Every deed entitled by law to be recorded, shall be recorded in the order, and as of the time when the same shall be delivered to the clerk for that purpose, and shall be considered as recorded from the time of such delivery.

Time of taking effect

SEC. 16. All deeds, mortgages, and other instruments of writing, which are required to be recorded, shall take effect and be in force from and after the time of delivering the same to the clerk for record, and not before, as to all creditors and subsequent purchasers in good faith without notice; and all such deeds, mortgages, and other instruments, shall be adjudged void, as to all such creditors and subsequent purchasers without notice, whose deeds, mortgages, and other instruments, shall be first recorded: *Provided*, That such deeds, mortgages or instruments shall be valid between the parties.

Not lawfully recorded, unless, etc.

SEC. 17. They shall not be deemed lawfully recorded unless they have been previously acknowledged or proved in the manner herein prescribed.

Index, how kept.

SEC. 18. The county clerk must keep an index, the pages of which are so divided as to show in parallel columns—

First. The grantor.

Second. The grantee.

Third. The time when the instrument was filed.

Fourth. The date of the instrument.

Fifth. The nature of the instrument.

Sixth. The book and page where the record thereof may be found.

Seventh. The description of the lands conveyed, in the following manner:

Grantors.	Grantees.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	DESCRIPTION.
		1866.	1866.				
A. B.	C. D.	Jan. 1	Jan. 1	Deed.	No. 1	225	E. ½ N. E. ¼, Sec. 3, T. 1, R. 2 W.
E. F.	G. H.	June 4	June 4	Deed.			Lot 2, in Block 5, Omaha.
I. J.	L. M.	Nov. 3	Dec. 4	Mortgage.			S. ½ Sec. 10, T. 6 N., R. 3 W.

Endorsement of time of registry on instrument.

SEC. 19. The county clerk must indorse upon every instrument properly filed in his office for record, the minute, hour, day, month and year, when it was so filed, and shall forthwith make the returns in the index provided for in the last preceding section, except that of the book and page where the record of the instrument may be found, and from that time such entries shall furnish constructive notice to all the world, of the rights of the grantee, conferred by such instrument.

Entries in index to be double.

SEC. 20. The entries in such index shall be double, the one showing the names of the respective grantors, arranged in alphabetical order, the other those of the grantees, in like order. When there are two or more grantors having different surnames, there must be as many distinct entries among the grantors as there are different names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

Deeds must be recorded in same county.

SEC. 21. Deeds and other instruments relating to or affecting the title of real estate in this territory, shall be recorded in the county in which such real estate, or any part thereof, is situated; but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes.

Instrument, how revoked.

SEC. 22. No instrument containing a power to convey or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in conformity with the requirements of this chapter, can be revoked by any act of the party or parties thereto, until the instrument of revocation is executed, acknowledged or proved and certified, and filed for record with the county clerk of the county in which the power is recorded.

Official seal when not necessary.

SEC. 23. It shall be no objection to the record of a deed, that no official seal is appended to the recorded acknowledgment or proof thereof, if, when the acknowledgment or proof purports to have been taken by an officer having an official seal, there be a statement in the certificate of acknowledgment or proof that the same is made under his hand and seal of office, and the records show, by a scroll or otherwise, that there was such a seal, which shall be presumptive evidence that the official seal was attached to the original certificate.

Loss of deeds or records.

SEC. 24. The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may, on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record.

Wills may be recorded.

SEC. 25. Any will of real estate which shall have been duly proved in the probate court of any county in this territory, and any such will the proof of which shall be contested in that court and carried up by appeal or otherwise, and the validity of which shall be finally established, may, with the certificate of proof annexed thereto, be recorded in the office of the county clerk of the county or counties where the said real estate lies, in the same manner and with like effect as in case of deeds.

Decree and judgment.

SEC. 26. Any exemplification of any decree or judgment in partition on final decree in chancery affecting real estate, may in like manner be recorded in the county clerk's office, in any county in which any real estate described therein may be situated; such record or exemplification thereof shall be received in evidence, and shall be as effectual in all cases as the original exemplification would be if produced, and shall be open to the same objection.

How indexed.

SEC. 27. On recording any such will, exemplification or decree, the clerk shall index the same with the indices of deeds, and as near as may be as deeds are to be indexed, placing the name of the devisor, petitioner or plaintiff, with the grantors, and the devisee or defendant with the grantees.

County clerks to procure books.

SEC. 28. Different sets of books shall be provided by the clerks of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances absolute in their terms, and not intended as mortgages, or as securities in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

Deed when considered in the nature of a mortgage.

SEC. 29. Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time.

Index of mortgages.

SEC. 30. The county clerk shall keep an index of all mortgages and discharges of mortgages left for record and entitled to be recorded, in the same form as is required in case of deeds.

Mortgage, how discharged.

SEC. 31. Any mortgage that has been or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the county clerk or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Same.

SEC. 32. Any mortgage shall also be discharged upon the record thereof, by the county clerk in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Same.

SEC. 33. Every such certificate, and the proof or the acknowledgment thereof, shall be indexed in the order of mortgages, and recorded at full length; and in the record of discharge, the clerk shall make a reference to the book and page where the mortgage is recorded.

Damages in case of refusal to discharge.

SEC. 34. If any mortgagee or his personal representative or assignee, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute or acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in the proper action.

Claims.

SEC. 35. The provisions of this chapter shall apply to the conveyance of all claims and improvements upon the public lands.

Conveyance when not void.

SEC. 36. No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof, such lands shall be in the actual possession of another, claiming adversely.

Where recorded.

SEC. 37. The clerk shall mark upon the deed or instrument, after recording the same, the book and page in which the same is recorded.

Governor may appoint commissioners.

SEC. 38. The governor of this territory may commission so many commissioners in such of the states and territories of the United States, or in the District of Columbia as he may deem expedient, not exceeding one in any one city or county, who shall continue in office four years, and shall have authority to take the acknowledgment and proof of the execution of any instrument in writing, conveying real estate or any interest therein, or affecting the same, lying in this territory, or of any assignment, transfer, power of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing to be used or recorded in this territory; also to administer an oath or affirmation to any person who may desire it.

Acknowledgment, when valid.

SEC. 39. Any acknowledgment or proof taken in pursuance of the powers hereby conferred, and in accordance with the provisions of this chapter, and certified by the commissioner, under his hand and official seal, upon the instrument mentioned in the preceding section, shall, when authenticated as hereinafter mentioned, be entitled to be recorded in the office of the county clerk, and shall have the same force and effect and be as available as if taken or made before any officer by this chapter authorized to take proofs or acknowledgments, residing in this territory; and any affidavit or affirmation so made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents, as if taken and certified by an officer authorized to administer oaths residing in this territory.

Commissioners, how to qualify.

SEC. 40. Every commissioner appointed as aforesaid, shall, before he performs any duty by virtue of his appointment and of this law, take and subscribe an oath or affirmation before some officer authorized to administer the same, well and faithfully to perform all the duties of such commissioner, under and by virtue of the laws of Nebraska, which oath or affirmation shall be filed in the office of the secretary of Nebraska. And every such commissioner shall also, before he enters upon the duties of his office, cause to be prepared an official seal, on which shall be designated his name, and the words, "a commissioner for Nebraska," together with the name of the state or territory, city and county within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of said secretary a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper handwriting.

Certificate of secretary of territory.

SEC. 41. *When any deed or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this chapter, before it shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by each commissioner as aforesaid, a certificate under the hand and official seal of the secretary of Nebraska, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

Time and date of certificate.

SEC. 42. No commissioner appointed under or by virtue of this law, shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation at any place other than that within which he shall reside, or for which he shall have been appointed; and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall specify the day on which, and the city or town and county within which the same was taken or administered; and without such specification, the said certificate shall be void.

Acknowledgments, how taken.

SEC. 43. No acknowledgment of any conveyance having been executed shall be taken by any officer, unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the person described in and who executed such conveyance.

Assignment of mortgage. SEC. 44. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Certificates of U.S land officers may be recorded. SEC. 45. All certificates of the register and recorder of any United States land office, for the entry or purchase of any tract of land, and all letters patent of land from the United States, or lands lying in this territory, may be recorded in the county in which the land lies; and the record of such certificates and patents, and all copies thereof so recorded, duly certified by the county clerk, shall be *prima facie* evidence of the existence of such certificates and patents, and conclusive evidence of the existence of such record. Effect of.

Penalty for frauds. SEC. 46. Every officer within this territory, authorized to take the acknowledgment or proof of any conveyance, and every county clerk, who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage, or instrument in writing, or in relation to the canceling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured.

Estate of a married woman. SEC. 47. Any real estate belonging to a married woman, may be managed, controlled, leased, devised or conveyed by her by deed, or by will, in the same manner and with like effect as if she were single.

Right of dower. SEC. 48. To convey her right of dower, she must execute a deed with or without her husband.

Term "real estate." SEC. 49. The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real, except leases for a term not exceeding one year.

Sec. 50. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any real estate or interest therein, shall be conveyed for a valuable consideration, and also any assignee of a mortgage or lease, or other conditional estate. **Purchaser.**

Sec. 51. The term "deed," as used in this chapter, shall be construed to embrace every instrument in writing, by which any real estate or interest therein is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except last wills, and leases for one year or for a less time. **Deed.**

Sec. 52. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed in this chapter, may be recorded in the office of the county clerk of any county in which the real estate to which such power or contract relates may be situated; and when so proved or acknowledged, and the record thereof when recorded, or the transcript of such record, may be read in evidence, in the same manner and with the like effect as a conveyance recorded in such county. **Power of attorney.**

Sec. 53. A married woman shall not be bound by any covenant in a joint deed of herself and husband. **Married woman not bound by covenant.**

Sec. 54. The term "heirs," or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple. **Heirs.**

Sec. 55. Every conveyance of real estate shall pass all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. **Conveyance**

Sec. 56. When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor, to the extent of that which the deed purports to convey, shall accrue to the benefit of the grantee. **What interest passes.**

When may commence.

SEC. 57. Estates may be created to commence at a future day.

Construction of instrument.

Duty of courts.

SEC. 58. In the construction of every instrument creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true interest of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law.

Aliens may acquire.

SEC. 59. Any alien may acquire and hold real estate or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such real estate shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of the United States.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO REAL ESTATE.

Conveyance when void.

SEC. 60. Every conveyance of, or charge upon, any estate or interest in lands, or the rents and profits thereof, made or created with intent to defraud prior or subsequent purchasers for a valuable consideration, shall, as against such purchasers, be void.

Subsequent purchaser.

SEC. 61. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantor in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Estate conveyed must be by act of law, or conveyance in writing.

SEC. 62. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, or surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.

Power of testator.

SEC. 63. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Contracts for leasing lands, etc., when to be in writing.

SEC. 64. Every contract for the leasing, for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made.

Specific performance in chancery.

SEC. 65. Nothing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements in cases of part performance.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO GOODS, CHATTELS AND THINGS IN ACTION.

When void.

SEC. 66. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Same.

SEC. 67. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith:

First. Every agreement that, by its terms, is not to be performed within one year from the making thereof.

Second. Every special promise to answer for the debt, default or misdoings of another person.

Third. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

Fourth. Every special promise by an executor or administrator to answer damages out of his own estate.

Same.

SEC. 68. Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless —

First. A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby; or, *Second.* Unless the buyer shall accept and receive part of such goods or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer shall, at the time, pay some part of the purchase money.

Goods sold at auction.

SEC. 69. Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of sale, enter in a sale book, a memorandum specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Sale, when presumed to be void.

SEC. 70. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, mortgaged or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

"Creditors."

SEC. 71. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession or under his control.

Reservation as to certain contracts.

SEC. 72. Nothing contained in sections seventy and seventy-one shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea, or in foreign ports, or upon the waters of a navigable stream, if the assignee or mortgagee shall take possession of such vessels or goods as soon as may be after the arrival thereof.

Mortgage, when void.

SEC. 73. Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed and recorded as directed by law.

Mortgage, when to be renewed.

SEC. 74. Every mortgage filed and recorded in pursuance of this subdivision, shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless, within thirty days next preceding the expiration of the year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property mortgaged, shall be again filed and recorded in the office of the county clerk.

When evidence.

SEC. 75. Such original instrument, or any copy thereof, so filed as aforesaid, including any statement made in pursuance of this subdivision, certified by the clerk in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy, and statement, were received and filed according to the endorsement of the clerk thereon, and of no other fact; and in all cases the original endorsement by the clerk, made in pursuance of this chapter, upon such instrument or copy, shall be received in evidence only of the facts stated in such endorsement.

GENERAL PROVISIONS.

What assignments declared void.

SEC. 76. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay or defraud creditors or persons, of their lawful rights, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

Same.

SEC. 77. Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, shall be void.

Void as to heirs.

SEC. 78. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

Fraudulent intent.

SEC. 79. The question of fraudulent intent in all cases arising under the provisions of this chapter, shall be deemed a question of fact, and not of law, and no conveyance or charge shall be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Same.

SEC. 80. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

"Lands," etc.

SEC. 81. The term "lands," as used in this chapter, shall be construed as co-extensive in meaning with, "lands, tenements and hereditaments," and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands, as above described.

"Conveyance."

SEC. 82. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing (except a last will and testament) whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

Consideration, how proved.

SEC. 83. The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

SEC. 84. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by his agent, thereunto authorized by writing. Agent.

SEC. 85. In the absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof. Mortgagor of real estate may retain possession, etc.

CHAPTER XLIV.

RECORDS.

SECTION 1. All citizens of this territory, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business. All persons may examine.

CHAPTER XLV.

REMOVAL FROM OFFICE.

SECTION 1. All county officers, including justices of the peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causes following: Officers, how and for what causes removed.

First. For habitual or willful neglect of duty.

Second. For gross partiality.

Third. For oppression.
Fourth. For extortion.
Fifth. For corruption.
Sixth. For willful mal-administration in office.
Seventh. For conviction of a felony.
Eighth. For habitual drunkenness.

Charges. SEC. 2. Any person may make such charge, and the board of commissioners shall have exclusive original jurisdiction thereof by a summons.

Mode of procedure. SEC. 3. The proceeding shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter.

Complaint, how brought SEC. 4. The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the territory that he believes the charges to be true.

Copy of complaint. SEC. 5. It will be sufficient that the summons require the accused to appear and answer the complaint of A. B. (naming the accuser) for "official misdemeanors;" but a copy of the complaint must be served with the summons.

Motion to dismiss. SEC. 6. No answer or other pleading after the complaint is necessary, but the defendant may move to reject the complaint or demur thereto, upon any ground rendering such motion or demurrer proper; and he may answer if he desires, and if he answer, the accuser may reply or not; but if there be an answer and reply, the provisions of this statute relating to pleadings in actions shall apply.

Judgment of removal. SEC. 7. The questions of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant; and the clerk shall enter a copy of the judgment in the election book.

Costs. SEC. 8. The accuser and the accused are liable to costs as in other actions.

Vacancy. SEC. 9. When the accused is an officer of the court, and is suspended, the court may supply his place by appointment for the term.

CHAPTER XLVI.

REVENUE.

SECTION 1. The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given: What property exempt.

First. The property of the United States and of this territory, including school lands.

Second. The property of a county, incorporated city or town, or school district, when devoted to the public use and not held for pecuniary profit.

Third. Public grounds, by whomsoever devoted to the public use, and including all places for the burial of the dead.

Fourth. The engines and implements used for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of fire companies.

Fifth. The grounds and buildings of library, scientific, benevolent and religious institutions, or societies devoted solely to the appropriate objects of these institutions, not exceeding three acres in extent, and not leased or otherwise used with a view to pecuniary profit.

Sixth. The books, papers, furniture, scientific or other apparatus pertaining to the above institutions, and used solely for the purpose above contemplated; and the like property of students in any such institutions, used for the purposes of their education.

Seventh. Money and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not to exceed in amount the sum prescribed in their charter or act of incorporation.

Eighth. Animals not specified in the next section; the wool shorn from the sheep of the person giving the list, and his crop harvested within one year previous to the listing; private libraries not exceeding one hundred dollars in value, and family pictures; the kitchen furniture of each family, the beds and bedding requisite for the use of the family, and one bed and bedding thereof for each single person not a member of another family; the apparel of every person and family, actually used for wearing, with all food provided for each family. But no person from whom a compensation for board or lodging is received or expected, is to be considered a member of a family within the intent and meaning of this chapter.

Ninth. The polls or estates, or both, of persons who by reason of age or infirmity may, in the judgment of the assessor, be unable to contribute to the public charge, such opinion being subject to revision by the county board of equalization.

What property taxable; enumeration.

SEC. 2. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed; and this section is intended to embrace lands and lots in towns, including lands bought from or donated by the United States and from this territory, and whether bought on a credit or otherwise; ferry franchises and toll bridges, which, for the purposes of this chapter, are to be considered as real property; horses and neat cattle, mules and asses, sheep and swine; money, whether in possession or on deposit, and including bank bills, money, property or labor due from solvent debtors on contract or in judgment, and whether within this territory or not; mortgages and other securities, and accounts bearing interest; stock or shares in any bank or company incorporated by this territory, or any other state or territory, and situated in or transacting business in this territory; public stocks, loans, household furniture not exempted, and including gold and silver plate, musical instruments, watches and jewelry; private libraries, for their value over one hundred dollars; pleasure carriages, stage hacks, omnibuses and other vehicles for transporting passengers; wagons, carts, drays, sleighs, and every other description of vehicles or carriages; boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this territory solely or not, if owned wholly or in part by persons who are inhabitants of this territory; annuities, but not including pensions from the United States or any other state of the Union; money invested in manufactories, including buildings, machinery, and materials; all moneys used in merchandizing; personal property of every description belonging to persons or companies doing freighting or transporting business across the plains, which shall be valued at the usual prices of similar property at the time and place of listing, and shall be assessed at the respective places of residence of such person or persons; together with all other property not above exempted, though not herein specified.

"Credits" defined.

SEC. 3. The term "credits," as used in this chapter, includes every claim and demand for money, labor, or other valuable thing; and every annuity or sum of money receivable at stated periods; and all money in property of any kind, and secured by deed, mortgage, or otherwise; but pensions from the United States, or any state, are not included in the above term.

Property to be listed annually at its cash value in money—exemption of $1,000.

SEC. 4. All taxable property, personal and real, shall be listed and valued each year, at its actual value at the place of listing. In the assessment of real property, used and occupied exclusively for agricultural purposes, other than lots situated within the limits of any city, town or village, the assessor shall not value the same higher by reason of any improvements thereon made exclusively for agricultural purposes, unless such improvements exceed the sum of one thousand dollars, when such excess only shall be assessed. The cultivation of fruit, forest and ornamental trees or grape vines upon any land in this territory shall in no wise increase the value of said land for revenue purposes.

Fruit trees, etc., exempt

Assessor's blanks, when and by whom furnished.

SEC. 5. On or before the first Monday of February in each year, the county commissioners of each county are required to furnish the precinct assessors with suitable notices and blank forms for the assessments, and such instructions as may be needful to secure full and uniform assessment and returns, and at the same time furnish each precinct assessor a list of all the entered lands in his precinct subject to taxation.

Tax lists, what they shall contain.

SEC. 6. The list of each person shall contain, first, his lands by township, range and section, and any division or part of a section lying in the county in which the list is required—and when such parcel of land is not a congressional division or subdivision, it shall be listed and described in some other mode, sufficient to identify it; his town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town; his personal property, by the following particulars: amount of capital employed in merchandise, amount of capital employed in manufacturing, number of horses, number of mules and asses, number of neat cattle, number of sheep, number of swine, number of carriages and vehicles of every description, amount of moneys and credits, amount of taxable household furniture, amount of stock or share in any incorporated company or company not incorporated, amount of all other personal property not exempt by law and not enumerated, and the number of polls.

Lists may be extended

SEC. 7. The above list of items may be extended at the discretion of the county commissioners, so as to obtain such facts as they may deem desirable.

List to be signed and sworn to.

SEC. 8. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified to by him, and the oath may be printed upon the blank form, and shall be in substance as follows:

Form of oath.

I (*A. B.*) do solemnly swear, that I have listed above (*or* within) all the lands, town lots, personal property, money and credits, subject by law to taxation, and owned by me, or required by law to be listed by me for any other person or persons, (*insert* as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor, *as the case may be*,) according to the best of my knowledge.

When a person fails to list his property, assessor to list same.

SEC. 9. When any person who is required to render the above statement fails to do so, from absence or sickness, and when any person refuses to do so, or to take or subscribe to the oath required, the assessor shall ascertain, according to the best information he can obtain, the number and value of the several species of property required; and to that end he is hereby authorized to examine on oath any person whom he supposes to have knowledge in

May examine witnesses.

relation thereto; and if any person refuses to testify, he shall forfeit the sum of five dollars, to be recovered by civil action in the name and to the use of the county; and the assessor shall make a minute of the names of persons refusing to swear to this list, or to testify as to the value of property, and shall note the same on the list and return the same to the board of county commissioners; and the county board of equalization shall add fifty per cent. to the amount of property returned by the assessor as the list of the person refusing to swear.

Refusal to swear, penalty.

Fifty per cent. to be added, on refusal to swear.

SEC. 10. The said statements of persons refusing to swear shall be endorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order and return them to the office of the county clerk by the second Monday of April next ensuing, at which time, or before, he shall also prepare and deliver his assessment roll.

Statements to be endorsed.

SEC. 11. All property is to be valued by the assessor, except such as is herein required to be valued by the owner.

What property to be valued by assessor.

SEC. 12. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

Assessor to take oath.

I (*A. B.*), Precinct Assessor, in and for the ——— precinct in ——— county, Nebraska, do solemnly swear, that the value of all property, moneys and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

Form of oath.

SEC. 13. Every inhabitant of this territory, of full age and sound mind, unless excepted by the provisions of this chapter, shall list all property subject to taxation in this

Who to list property for taxation.

territory of which he is the owner, or has the control or management, in the manner herein directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by his mother, if living; if not, then by the person having the property in charge; of a married woman by her husband; but if he be unable or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor, administrator or heirs; of a body corporate, company, society, or partnership, by the principal accounting officer, agent, or partner; property under mortgage or lease to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

Same.

SEC. 14. Commission merchants and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this territory, are, for the purposes of taxation, required to list all the property in their possession.

Personal property, where to be listed and taxed.

SEC. 15. All personal property is to be listed, assessed, and taxed in the county where the owner resides, on the first of March of the then current year; but if the owner resides out of the territory, it is to be listed and taxed where it may be at the time of listing; and if the agent or person having charge of such property neglects to list it, he will be subject to the penalty hereinafter provided.

Property listed in behalf of another.

SEC. 16. A person required to list property in behalf of another, shall list in the same county and precinct in which he would be required to list if it were his own (except as herein otherwise directed); but he must list it separate from his own, naming the person to whom it belongs; but the undivided property of a person deceased, belonging to heirs, may be listed as belonging to such heirs, without enumerating them.

Corporate property, how and by whom listed

SEC. 17. The president, secretary, or principal accounting officer of every canal or slackwater navigation company, railroad company, turnpike company, plankroad company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for in this chapter, for whatever purpose they may have been created, whether incorporated by any law of this territory or not, shall list for taxation, verified by the oath or affirmation of the person so listing, all the personal property, which shall be held to include road-bed, depots, water and wood stations, and such other realty as is necessary for the daily running operations of the road; moneys and credits of such company or corporations within the territory, at the actual value in money, in manner following: In all cases return shall be made to the several clerks of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each incorporated village or city therein. The value of all movable property shall be added to the stationary and fixed property.

Personal property of persons doing business in more than one county, how listed and taxed.

SEC. 18. When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county; and credits not existing in nor pertaining especially to the business in any one county, are to be listed and taxed in that county where his principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

Insurance companies, how taxed.

SEC. 19. Insurance companies, of every description, transacting business in this territory, shall be taxed in the same amount and at the same rate that all other property is taxed, upon the amount of premiums taken by them during the year previous to the listing in the county where the agent conducts the business; and the agent shall render the list, and shall be personally liable for the tax; and if he refuses to render the list, or to swear as herein acquired, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may, at their discretion, add fifty per cent. to the amount returned by the assessor.

Depreciated bank notes

SEC. 20. Depreciated bank notes and depreciated stocks and annuities, how listed. or shares in corporations or companies, may be listed at their current value and rate; credits shall be listed at such sums as the person listing them believes will be received, or can be collected, and annuities at the value which the person listing believes them to be worth in money.

Deductions from credits SEC. 21. In making up the amounts of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of *bona fide* debts owing by him; but no acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section; and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor, and, if there are other sureties able to contribute, then so much only shall be deducted as he in whose behalf the list is made will be bound to pay or contribute; but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance; nor on account of an unpaid subscription to any society; nor on account of a subscription to, or installments payable on the capital stock of any company or corporation; nor upon any account whatever, unless such deduction be made from the amount of moneys or credits, or both, by such person listed.

Who shall be deemed a merchant. SEC. 22. Any person owning or having in his possession or control in this territory, with authority to sell the same, any personal property, purchased either within or out of the territory, with a view of selling the same at an advanced price or profit, or which has been consigned to him for the purpose of being sold within the territory, shall be held to be a merchant for the purposes of this chapter. Such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the average value of such property in his possession or control, at the time of listing.

Who shall be deemed a manufacturer. SEC. 23. Any person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer, for the purposes of this chapter, and he shall list for taxation the value of such property in his hands, estimated as directed in the previous section in case of merchants; but the value shall be estimated upon the materials only entering into the combination or manufacture.

Assessment roll, contents and form for lands.

SEC. 24. On or before the second Monday of April annually, the several precinct assessors shall make out and deliver to the county clerk an assessment roll, consisting of the following items, to wit:

First. A list of all the taxable lands in such precinct, in numerical order, beginning with the lowest numbered section in the lowest numbered township in the lowest numbered range in the precinct, and ending with the highest numbered section, township and range, with the number of acres in each tract set opposite the same, in a column provided for that purpose, and the assessed value thereof in another column, and the name of the owner or person listing the same in another column, with the columns of acres and values footed up. Such list shall be, as nearly as practicable, in the following form:

Return of Taxable Lands in ——— Precinct, in ——— County, Nebraska, as assessed for the Year 18—.

Part of Section.	Sec.	Township.	Range.	Acres.	Val.	Owners' Names.

Form for town lots.

Second. A list of all the town lots in each town or city in each precinct, in like numerical order, with the valuation of each lot or part of lot, and the name of the person listing the same opposite, with the column of values footed up, substantially in the following form:

Return of Lots in the City (or Town) of ——, in —— Precinct, —— County, Nebraska, as assessed for the Year 18—.

Block.	Lot.	Value.	Owner.

Form for personal roperty.

Third. A list, in alphabetical order, of all the persons and bodies corporate in whose names any property, or anything taxable other than the real estate, has been listed, with a sufficient number of columns opposite each name, in which to enter the numbers or values, or both, of the several species of property or other interests required by law to be listed, with the columns of numbers and values footed up. Such list shall be as nearly as practicable in the following form, to wit:

Return of Personal Property in ——— Precinct, in ——— County, Nebraska, assessed for the Year 18—.

NAMES.	Merchandise.	Manufactures.	Horses.	Value.	Mules.	Value.	Cattle.	Value.	Sheep.	Value.	Swine.	Value.	Carriages.	Value.	Money and Credits.	Household Furniture.	Stock or Shares.	Other Personalty.	Total.	Poll Tax.	REMARKS.

In case of refusal or neglect to list property, assessor to proceed.

SEC. 25. In every case where a person required to list property for himself or in behalf of another, shall neglect or refuse to list the same, the assessor shall proceed as directed in section nine of this chapter, and in the return of personal property, opposite the name of such person, he shall write the words "by the assessor," when the list was made by himself, together with the words "absent" or "sick," or the words "refused to list" or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it; and a neglect to make it shall be taken as a refusal.

Precinct assessors to meet to equalize assessments

SEC. 26. The precinct assessors of each county shall meet at the office of the county clerk on the first Monday of April in each year, for the purpose of equalizing the assessments, and shall return their lists to the county clerk on or before the second Monday of the same month.

Commissioners to constitute county board of equalization

Shall meet third Monday in April annually.

SEC. 27. The county commissioners of each county shall constitute a board of equalization for the county, and said board, or any two of them, shall hold a session of at least three days at the county seat, commencing on the third Monday of April in each year, for the purpose of correcting the assessment roll in their county; and during the sitting of said board, any person feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any supposed error in the listing or valuation of his property, whether real or personal; and if any person returned as refusing to render a list, or to be sworn thereto, or to the list of property of another, can show good cause for such failure or refusal, the penalty herein provided may be remitted.

County clerk to make abstract of assessment rolls.

SEC. 28. As soon as practicable after the assessment rolls are equalized and corrected as provided in the last section, and before the first Monday of May next ensuing, the county clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the county, and the total value thereof; the total valuation of town lots; the amount of property invested in merchandise; the amount of property invested in manufactures; the number of horses, and their total value; the number of mules and asses, and their total value; the number of cattle, and their total value; the number of sheep, and their total value; the number of swine, and their total value; the number of carriages and vehicles of every kind, and their total value; the total value of money and credits; the total value of taxable household furniture; the total value of stock or shares; the total value of all other personalty not enumerated under the foregoing heads, and the number of polls; which abstract the clerk is directed to transmit without delay to the auditor of the territory; and the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable; and it shall be the duty of the auditor of the territory to furnish such forms for the use of the county commissioners, assessors, clerks and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the territory.

Auditor of the territory to furnish forms, etc.

SEC. 29. The governor, territorial auditor and treasurer, (or the majority of them), shall constitute the territorial "board of equalization," and said board of equalization shall hold a session at the capitol of the territory, commencing on the fourth Monday of May in each year, and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the territorial tax, the territorial school tax, and the territorial sinking fund tax, to be levied for the current year, together with any other general or special territorial taxes required by law to be levied, and to equalize the levy of such taxes throughout the territory; but such equalization shall be made by varying the rate of taxation on the different counties, in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

Territorial board of equalization

SEC. 30. The rate of the general territorial tax, shall not be less than one-half mill nor more than two and half mills on the dollar valuation; the rate of the territorial school tax shall not be less than one-half a mill nor more than two mills on the dollar valuation; and the rate of the territorial sinking fund tax shall not be less than one-half of a mill nor more than two mills on the dollar valuation,

Minimum and maximum rates of taxation.

Rate for county purposes, etc.

in any county in the territory. For ordinary county revenue, including the support of the poor, not more than six mills on the dollar; for roads, a poll tax of one dollar or one day's work, and a land tax in any rate not exceeding three dollars to the quarter section, to be paid in money, or in labor at the rate of one dollar and fifty cents per day, at the option of the person so taxed; and the certificate that the person named therein has actually performed eight hours labor for each day's work so certified, shall be received by the county treasurer for their several amounts, in discharge of said tax. For county sinking fund, such rate as in the estimation of the commissioners will pay one year's interest on all the outstanding debt of the county, with fifteen per cent. of the principal.

Territorial auditor to transmit rate of taxation, annually, to county clerks before second Monday in June.

SEC. 31. On or before the second Monday of June in each year, the territorial auditor is required to transmit to the county clerk of each county, a statement of the rate of taxation required in said county for the general territorial tax, the territorial school tax, and the territorial sinking fund tax, as directed to be levied and collected by the territorial board of equalization. Should the territorial board of equalization fail to fix the rate of taxation, in any or all of the counties, then the auditor is required to notify the county clerk that the rate to be levied and collected in such county or counties, is the maximum rate provided in section thirty of this chapter.

County commissioners to fix rate of county taxation, when.

SEC. 32. On the first Monday of July in each year, the county commissioners shall meet at the county seat, to levy the necessary taxes for the current year, and they may levy the taxes at any time after the first Monday of July; if the statement from the territorial board of equalization has not been received, such levy shall not be postponed for more than ten days, and they shall levy taxes as herein directed.

Rate of territorial tax to be fixed by the territorial board of equalization, except, etc.

SEC. 33. The rate of the general territorial tax, the territorial school tax, and the territorial sinking fund tax, shall be as directed by the territorial board of equalization; but in case the statement of the levy of such taxes as hereinbefore directed, has not been received by the county clerk within ten days after the first Monday in July, then the said county commissioners shall levy the maximum rate of such taxes provided for in section thirty of this chapter.

Rate of taxation for school purposes.

SEC. 34. No special, precinct or district school taxes, hereafter levied pursuant to any existing law, for the purpose of building or repairing school houses or for any other purpose, shall exceed in any one year the rate of two mills on the dollar of the assessed valuation of the property in any precinct or school district wherein the same may be levied: *Provided*, That qualified voters in any school district or precinct, shall have the power and authority to increase said district or precinct school tax by a vote of the majority of the electors of said school district or precinct, at an election to be held for that purpose, of which election previous notice shall be given by the clerk of the board of education of said school district or precinct, for at least ten days previous thereto, by posting written or printed notices at three public places in said district or precinct, stating the object of such election and the time and place of holding the same in said school district or precinct, as the case may be; and if a majority of said electors shall vote in favor of an increase of said school tax in such district or precinct, the board of education shall then determine the amount of such tax, not exceeding in one year ten mills on each dollar valuation, which amount so determined shall be returned to the proper officers provided by this chapter.

Proviso.

County clerk to make out tax list.

SEC. 35. As soon as practicable after the taxes are levied, the county clerk shall make out a tax list, containing—

What it shall contain.

First. A list, in alphabetical order, of all the persons and bodies corporate in whose name any property other than real estate has been listed, with the amount or valuation thereof, in a separate column opposite the name, and the total amount of all the taxes carried out in another column.

Second. A list of all the taxable lands in the county (not including town lots), in numerical order, commencing with the lowest numbered section in the lowest numbered township in the lowest numbered range in the county, and ending with the highest numbered section, township and range, with the names of the persons or parties in whose names each subdivision was listed opposite each subdivision, on the margin or in a column provided for that purpose, with the valuation of each tract, and the several species of taxes, and the total of all the taxes carried out in separate columns opposite each tract, in the same manner as provided in the alphabetical list of names.

Third. A list of all the city or town lots in each city or town in the county, commencing with the lowest number and ending with the highest number in each city or town, with the name of the person or party listing each lot or part of lot opposite the same, and the valuation and several species of taxes, and total taxes carried out in separate columns, in the same manner as hereinbefore provided in respect to personal property and lands.

Tax list to be retained by clerk.

SEC. 36. The tax list, when completed, shall be kept by the county clerk as the property of the county; the clerk shall also prepare a duplicate of the tax list for his county, and deliver the same to the county treasurer on or before the first day of December following the date of the levy for the current year.

Form of tax list and duplicate.

SEC. 37. The tax list and duplicate shall be as nearly as practicable in the following form, to wit:

Tax List for 18—, ——— *County, Nebraska.*

NAMES.	Part of Section.	Section.	Township.	Range.	Acres.	Value.	Name of Town.	Lot.	Block.	Value.	Personalty.	Territorial Tax.	Territorial School Tax.	Territorial Sinking Fund Tax.	County Tax.	County Sinking Fund Tax.	Land Road Tax.	Poll Tax.	District School Tax.			TOTAL.	REMARKS.

Commissioners to make an entry on tax list and duplicate.

SEC. 38. An entry is required to be made upon the tax list and its duplicate, showing what it is, and for what county and year it is, and the county commissioners shall attach to the lists their warrant, under their hand and official seal, in general terms requiring the treasurer to collect the taxes therein levied according to law; and no informality in the foregoing requirements shall render any proceedings for the collection of taxes illegal; the county clerk shall take the receipt of the county treasurer on delivering to him the duplicate tax list, with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection, by the treasurer, of all taxes therein contained.

County treasurer to be collector of taxes.

SEC. 39. The county treasurer of each county shall be the collector of the taxes, and it shall be the duty of the treasurer to attend at the county seat at all times, to receive the taxes not yet paid, and he is also authorized and required to collect, so far as practicable, the taxes remaining unpaid on the list of the former year or years; in all cases where taxes are paid, he shall give a receipt to the person paying the same.

What kinds of funds receivable for the various taxes.

SEC. 40. Territorial warrants are receivable for the amount payable into the territorial treasury, on account of the general territorial tax, county warrants are receivable at the treasury of the proper county for the amount payable into the county treasury, and city warrants shall be received for city taxes; but United States treasury notes, or their equivalent only, are receivable for school taxes and territorial sinking fund taxes; and such other taxes as are or may be required by law to be paid in cash, and road and poll taxes may be discharged as provided in section thirty.

Treasurer to give duplicate receipts when taxes are paid.

SEC. 41. Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date and amount, and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall, within six days, be filed by the treasurer with the county clerk; and such duplicate receipts shall specify the land or other prop-

What to contain.

erty on which such tax was assessed according to its description on the tax duplicate, or in some other sufficient manner, and shall also specify the amount of each separate and distinct fund in separate or distinct lines or columns, and whether the said separate and distinct funds were paid in cash or in territorial warrants, county or road orders, or supervisors' receipts, as the case may be.

Form of tax receipt and duplicate.

SEC. 42. The tax receipt and duplicate shall be substantially in the following form, to wit:

No. —— $——

Treasurer's Office, —— *County, Nebraska,*
——, 18—.

Received of ——, —— *Dollars, in full of the following Taxes for the Year* 18—, *on the annexed Property or Real Estate.*

PART OF SECTION, OR NAME OF TOWN.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	KIND OF TAX.	AMOUNT OF TAXES.			
						Paid in Cash.	Paid in Warrants.	Interest.	TOTAL.
					Territorial Tax.				
					Territorial School Tax.				
					Territorial Sinking Fund Tax.				
					County Tax.				
					County Sinking Fund Tax.				
					Land Road Tax.				
					Road Poll Tax.				
					District School Tax.				
					Advertising Fees.				

.... *Treasurer.*

By .... *Deputy.*

SEC. 43. It shall be the duty of the county clerk, on receiving any duplicate tax receipt from the treasurer, forthwith to examine the same and compare it with the tax list in his possession, and see if the total amount of taxes and the several amounts of the different funds are correctly entered and set forth in such receipt, and in case it shall appear that the treasurer has not collected the full amount of taxes and interest which, according to the tax list and the terms of the receipt, he should have collected, then the county clerk shall forthwith charge the treasurer with the amount such receipt falls short of the true amount, and the treasurer shall be liable on his official bond to account for and pay over the same.

County clerk to examine treasurer's receipts.

SEC. 44. All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this territory.

Receipts to be numbered consecutively.

SEC. 45. Whenever any taxes are paid, the treasurer shall write on the tax duplicate opposite the description of the real estate or property whereon the same were levied, the word "paid," together with the date of such payment and the name of the person paying the same; and the county clerk, on receiving the duplicate receipt, shall forthwith make the same entries on the tax list in his possession.

Treasurer to endorse payments on duplicate.

SEC. 46. The county treasurer is required to keep a cash book, in which he shall enter an account of all money by him received, specifying in proper columns provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether territorial, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders or receipts, each in a separate column, and the total amount for which the receipt was given, in another column; and the treasurer shall keep his account of money received for

Treasurer to keep a cash book.

and on account of taxes, separate and distinct from moneys received on any other account; and shall also keep his account of money received for and on account of taxes levied and assessed for any one year, separate and distinct from those levied and assessed for any other year; and all entries in said cash book, of money received for taxes, shall be in the numerical order of the receipts issued therefor.

Money, etc. received for licenses, etc how receipted for.

SEC. 47. Whenever the treasurer receives money, warrants or orders, on account of licenses, fines or any other account except taxes, he shall make out duplicate receipts for the same, and deliver one to the person making such payment, and the other to the county clerk, as provided in the case of tax receipts, and shall forthwith enter the same in his cash book as in case of money received for taxes, but in a separate place and with a separate and distinct series of numbers of receipts issued therefor.

Form of treasurer's cash book.

SEC. 48. The cash book above provided for shall be as nearly as practicable in the following form, to wit:

Treasurer's Cash Book. —— *County, Nebraska.*

Date.	Number of Receipt.	By whom paid.	Territorial Fund.		Territorial School Fund.	Territorial Sinking Fund.	County Fund.		Co. Sinking Fund.		Land Road Fund.			Poll Fund.			District School Fund.	Advertising Fees.	Total.	Remarks.
			Paid in cash.	Paid in warrants.			Paid in cash.	Paid in warrants.	Paid in cash.	Paid in warrants.	Paid in cash.	Paid in warrants.	Paid in receipts.	Paid in cash.	Paid in warrants.	Paid in receipts.				

County clerk to keep a duplicate of treasurer's cash book.

SEC. 49. The county clerk is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same.

Errors in tax list or assessment roll to be corrected.

SEC. 50. If on the assessment roll or tax list there be any error in the name of the person assessed or taxed, the name may be changed, and the tax collected from the person intended, if he be taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon his assessment roll, and assess the value, and the treasurer shall enter it upon the tax list, and collect the tax as in other cases.

No demand of taxes necessary.

SEC. 51. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law, to attend at the treasurer's office at the county seat and pay his taxes; and if any person neglect so to attend and pay his taxes, until after the first day of January next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale: *Provided*, That in case any person, having only personal property assessed and upon which the taxes are unpaid, shall, in the opinion of the treasurer, be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands.

When taxes become delinquent.

SEC. 52. On the first day of May of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent, and shall draw interest at the rate of ten per cent. per annum from the date of such delinquency.

Penalty.

SEC. 53. To all taxes which remain unpaid at the time the same become delinquent, there shall be added, as a penalty, ten per cent. on the amount so remaining unpaid, which shall be added to the amount assessed, and collected by the county treasurer.

Taxes a perpetual lien on real property.

SEC. 54. Taxes upon real property are hereby made a perpetual lien thereupon, against all persons and bodies corporate, except the United States and this territory.

Goods distrained for taxes, how kept and sold.

SEC. 55. When the treasurer distrains goods, he may keep them at the expense of the owner, and he shall give notice of the time of their sale, within five days after the day of the taking, in the manner that constables are required to give notice of the time of the sale of personal property in execution; and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding three days, and shall adjourn once at least when there are no bidders; and in case of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing, of the sale and charges.

If treasurer is resisted he may call for aid; penalty for refusal.

SEC. 56. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action, in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

Taxes may be paid after 1st of January.

SEC. 57. The treasurer shall continue to receive payment of all taxes after the first day of January upon the above terms until collected by distress and sale.

Real estate may be sold for delinquent city or territorial tax, whenever, etc.

SEC. 58. Whenever, in the collection of any district, town, city or local tax, which may have been levied according to law, the collector is not able to make the tax by distress and sale of personal property, and real estate is to be sold for the same, it shall be the duty of the collector of the tax to send such delinquent list to the county treasurer on or before the fifteenth day of July of each year, and the county treasurer shall receive the delinquent list and advertise the same at the same time he advertises the sale of real estate for delinquent taxes, as hereinafter provided, by adding the amount of such delinquent district, town, city or local tax to the amount of delinquent territorial, county and other taxes, and shall sell such lands for the purpose of paying all such delinquent taxes as hereinafter directed, and shall credit the proper district, town, city or locality for the amount of taxes so collected, which shall be subject to the order of the proper collecting officer.

Notice of sale of property for delinquent taxes

SEC. 59. The treasurer shall give notice of the sale of real property by publication thereof, once a week for three consecutive weeks, commencing the first week in August preceding the sale, in a newspaper in his county, if there be one, and if there be no paper published in his county, shall give notice by a written or printed notice posted on the door of the court house or building in which the courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale; such notice shall contain a notification that all lands, on which the taxes of the preceding year (naming it) remain unpaid, will be sold, and the time and place of the sale, and said notice must contain a list of the lands to be sold, and the amount of taxes due. The treasurer shall add to each description of land so advertised the sum of ten cents for each description, other than town lot, and for each town lot the sum of five cents, to defray the expenses of advertising, which amount shall be paid by the county treasurer at the expiration of the sale, upon the affidavit of the publisher.

Fees of printers for advertising the same.

Sale to take place first Monday in September.

SEC. 60. On the first Monday of September in each year, between the hours of nine o'clock A. M., and four o'clock P. M., the treasurer is directed to offer at public sale, at the court house, or place of holding courts in his county, or at the treasurer's office where by law the taxes are made payable, all lands on which the taxes levied for the previous year still remain unpaid, and he may adjourn the sale from day to day until all the lands and lots or blocks have been offered.

Regulations as to sale.

SEC. 61. The person who offers to pay the amount due on any parcel of land for the smallest portion of the same, is to be considered the highest bidder, and when such a portion constitutes a half, or more, of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided, in such case, lengthwise by a parallel with the proper lines of the lots. If the portion taken be less than one-half of the parcel, it is to be taken from the south-east corner, in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax save that which is due upon itself exclusively, and the above directions concerning the division of a tract of land, shall be modified so as to meet this requirement; and to that end, the quantity of land bid may be obtained by drawing the division line in any direction or form, so as to avoid the homestead, and when the homestead constitutes a part of the tract or parcel sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause proceedings to be had similar to that required in relation to mechanics' liens, for the ascertainment of the homestead; and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set it apart from the homestead.

Land, how divided.

Homestead, how ascertained.

SEC. 62. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed, and if it has closed, he may again advertise it specially and by description, by one written or printed notice, posted for two weeks on the door of the court house, or place where courts are usually held, after which it may be sold at public sale; or the treasurer may recover the amount bid, by civil action brought in the name of the county in which the sale was held.

In case bidder fails to pay the tax, treasurer may again sell, etc.

SEC. 63. On or before the first Monday of October following the sale of real property, the treasurer is required to file in the office of the county clerk of his county a return of his sale of lands (retaining a copy in his office), showing the lands sold, the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the advertisement, verified by

Treasurer to file return of sale with county clerk by first Monday in October.

an affidavit; and such certificate shall be evidence of the regularity of the proceedings.

Form of treasurer's return. SEC. 64. The descriptions of real estate in such returns shall be entered in the same numerical order as required in the tax list, and such return shall be, as nearly as may be, in the following form, to wit:

Treasurer's Sale Book. *Delinquent Taxes of* 18—, ——— *County, Nebraska.*

Date of Sale.	Part of Section or name of Town.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	Name of Purchaser.	Amount sold for.	Subsequent Taxes paid.	Total.	By whom redeemed.	Amount paid for redemption.	Redemption money receipted by.	Remarks.

Purchaser entitled to a certificate; its validity and form.

SEC. 65. The purchaser of any tract of land sold by the county treasurer for taxes, will be entitled to a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds; such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pay any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "Sold for tax at public sale." Such certificate shall be substantially in the following form, to wit:

County Treasurer's Certificate of Tax Sale.

THE TERRITORY OF NEBRASKA, }
——— COUNTY. } *ss.*

I, ———, treasurer of the county of ———, in the territory of Nebraska, do hereby certify, that the following described real estate in said county and territory, to wit: (*describing the same*) was, on the —— day of ——, 18—, duly sold by me in the manner provided by law for the delinquent taxes for the year 18— thereon, amounting to ——— dollars, including interest and penalty thereon, and the costs allowed by law, to ———, for the said sum of ——— dollars, he being the highest and best bidder for the same. And I further certify, that unless redemption is made of said real estate, in the manner provided by law, the said ———, — heirs or assigns, will be entitled to a deed therefor on and after the —— of ——, A. D. 18—, on surrender of this certificate.

In witness whereof, I have hereunto set my hand this —— day of ——, A. D. 18—.

———, *Treasurer.*

Treasurer to receive 50 cents for certificate.

SEC. 66. The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale, together with the necessary amount of United States revenue stamps, and the fee of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person, may be included in one deed or certificate, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale book opposite the description of the land conveyed.

Property not sold at public sale may be sold at private sale; form of certificate in such case.

SEC. 67. After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk, as provided in section sixty-three of this chapter, if any real estate remain unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale, at his office, to any person who will pay the amount of the taxes, penalty and costs thereon for the same, and to deliver to said purchaser a certificate, as provided in section sixty-five of this chapter, and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser and the other to the county clerk, as hereinbefore provided, (with the additional statement inserted in the certificate, that such lands have been offered at public sale for taxes, but not sold for want of bidders,) on which he is required to write, "Sold for taxes at private sale;" and the treasurer is further authorized and required to sell as aforesaid all real estate in his county on which taxes remain unpaid and delinquent for any previous year or years.

Property sold may be redeemed in two years.

SEC. 68. The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the day of such sale, by paying the county treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, and interest thereon at the rate of forty per cent. per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the redemption in the list of sales, and give a receipt therefor to the person redeeming the same, and file a duplicate of the same with the county clerk as in other cases, and hold the money paid to the order of the purchaser, his agent or attorney: *Provided*, That infants, idiots and insane persons may redeem any lands belonging

Proviso as to idiots and insane persons.

to them, sold for taxes, within two years after the expiration of such disability.

Persons claiming interest may redeem, etc.

SEC. 69. Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal and subsequent taxes as he shall claim of the land sold.

Duties of treasurer in case of partial redemptions.

SEC. 70. In every case of a partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

If not redeemed in two years, treasurer to execute a conveyance to purchaser

SEC. 71. If no person shall redeem such lands within two years, at any time after the expiration thereof and on production of the certificate of purchase, the treasurer of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the territory, a conveyance of the real estate so sold, subject, however, to all the claims which the territory may have thereon for taxes or other liens or incumbrances.

Execution of conveyance to be attested by clerk.

SEC. 72. Such conveyance shall be executed by the county treasurer under his hand, and the execution thereof shall be attested by the county clerk, with the county seal, and such deed shall be *prima facie* evidence of the truth of all the facts therein recited, and no more, and such deed shall be, as far as practicable, in the following form, to wit:

Form of treasurer's deed.

Whereas, A. B. did, on the —— day of ——, A. D. 18—, produce to the undersigned, C. D., treasurer of the county of ——, in the territory of Nebraska, a certificate of purchase in writing, bearing date the —— day of ——, 18—, signed by E. F., who at the last mentioned date was treasurer of said county, from which it appears that —— did, on the —— day of ——, 18—, purchase at public auction at the door of the court house in said county, the tract, parcel or lot of land lastly in this indenure described, and which lot was sold to —— for the sum of ——, being the amount due on the following tract or lot of land returned delinquent for the non-payment of taxes, costs and charges for the year 18—, to wit: (*here insert the land offered for sale.*) And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 18—, and that said lands had been legally advertised for sale for taxes, and were sold on the —— day of ——, 18—. Now, therefore, this indenture, made this —— day of ——, 18—, between the territory of Nebraska, by C. D., the treasurer of said county, of the first part, and the said A. B. of the second part, witnesseth, that the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, —— heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to wit: (*describe the land,*) to have and to hold said mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, —— heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., treasurer of said county of ———, has hereunto set his hand and seal on the day and year aforesaid.

Attest: ———. [SEAL.]

Which deed shall be acknowledged by said treasurer before some one authorized by law to take acknowledgments of deeds. Acknowledgment.

SEC. 73. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner. Sale not invalid if listed erroneously.

SEC. 74. When conveyances are delivered for lands sold for taxes, the certificate therefor shall be canceled and filed away by the county clerk; and in case of the loss of any certificate, on being fully satisfied thereof by due proof, and bond given to the territory of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk. Certificates to be canceled when conveyances are made; proceedings when certificates are lost.

SEC. 75. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to save the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties shall be liable for the amount to the county on his bond, or the purchaser may recover the same directly from the treasurer. When lands are erroneously sold, county to save purchaser harmless.

License to peddlers; amount.

SEC. 76. A tax of thirty dollars, for territorial purposes, shall be levied upon each peddler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise not manufactured within the limits of this territory, for a license to peddle throughout the territory for one year.

From whom obtained.

SEC. 77. Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor.

Penalty for peddling without license.

SEC. 78. Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable whether he be the owner or not, and upon conviction thereof, shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had, to be recovered by civil action in the name of the county prosecuting for the same. All fines and penalties recovered under this section, shall be applied to the common school fund of the county prosecuting for the same; and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produce a license upon trial, such peddler shall pay all costs of prosecution.

County treasurer to pay to territorial treasurer, annually.

SEC. 79. The treasurers of the several counties shall pay into the territorial treasury all funds in their hands belonging thereto, on or before the first Monday of November in each year, and at such other times as the territorial treasurer shall require, and the funds so paid in shall be the identical territorial warrants, if any, received by the treasurer for payment of the taxes, or in coin, or in treasury notes of the United States; and the county treasurer shall be entitled to receive ten cents a mile for travel each way by the nearest route, in making his returns to the territorial treasurer, which he may receive either by a credit on his account, or on an order of the auditor from the territorial treasury.

Penalty in case of failure to settle.

SEC. 80. If any county treasurer shall willfully and negligently fail to settle with the territorial treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the territory the sum of five hundred dollars, which sum may be recovered of him, or his sureties, on suit brought by the territorial treasurer in any court of this territory having jurisdiction; or in case of failure of the territorial treasurer to bring such suit, then any citizen of the territory may bring the same.

County treasurers to settle with commissioners.

SEC. 81. The county treasurer shall settle with the county commissioners on or before the first Monday of May, and on the first Monday of October: *Provided, however*, That the county commissioners may require the county treasurer to settle with them at any time. The treasurer is to be charged with the amount of all tax lists placed in his hands for collection, and credited with the amounts collected thereon, and the delinquent lists, and he shall leave his vouchers with the commissioners, to be retained by them for evidence of his settlement. If the treasurer's accounts are correct, the commissioners shall certify the same; if not, he shall be liable on his bond.

Territorial auditor to procure list of lands from land officers.

SEC. 82. A list of lands becoming taxable for the first time in each county of the territory, shall be procured by the territorial auditor from the proper land officers, at the best prices for the territory, and a list of the lands becoming so taxable in each of the several counties, shall be forwarded by the auditor to the county clerk of each county on or before the fifteenth day of January of each year.

County treasurer to keep a "warrant book."

What it shall contain

SEC. 83. Each county treasurer is required to keep a book called the "warrant book," in which he shall enter every territorial, county, road, or other warrant or order by him paid, or received in payment of taxes, specifying the date at which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed, and the total amount for which it was received; and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash, and in another and separate place he shall enter an account of all indorsements made on warrants or orders in part payment thereof. Such warrant book shall be in the following form, to wit:

Treasurer's Warrant Book. ——— *County, Nebraska.*

Date.	From whom received.	Payee of Warrant.	No. of Warrant.	Date of Warrant.	Amount.	Indorsements.	Principal.	Interest.	Total.	Remarks.

SEC. 84. If any county treasurer in this territory, or his deputy, or any other person, shall knowingly or willfully make, issue and deliver any tax receipt, or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in warrants or orders when the same was or were paid in cash, such treasurer, or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction in this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year nor more than five years, in the discretion of the court.

Issuance, etc., of false certificate by treasurer; penalty.

SEC. 85. If any county treasurer in this territory, or his deputy, or any other person, shall knowingly or willfully make, issue and deliver any tax receipt, or duplicate tax receipt, required by section forty-one of this chapter to be issued, by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate, different from each other, with intent to defraud the territory of Nebraska, or any county in said territory, or any person or persons whomsoever, such treasurer or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction in this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year nor more than five years, in the discretion of the court.

Same.

SEC. 86. In the case of dereliction of duty on the part of any officer or person required by law to perform any duty under the provisions of this chapter in any county in this territory, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in any such county, on receiving satisfactory evidence of such dereliction or failure to perform, as required by law, any duty enjoined by this chapter, shall refuse to pay such person any sum whatever for such services.

Dereliction of officers or persons; penalty.

Auditor of territory to procure blank books and forms.

SEC. 87. The auditor of the territory is hereby required to procure the necessary blank books and blanks according to the forms prescribed by this chapter, at the best prices for the territory, in quantity sufficient to supply all the counties in the territory, and furnish the same to the several counties at the expense of the territory, upon the requisition of the county commissioners, and the sum of ——— dollars is hereby appropriated for that purpose out of any moneys in the treasury not otherwise appropriated.

Each owner of dog required to list same.

SEC. 88. Every person owning or keeping a dog or dogs within the territory of Nebraska, shall be required to list to the precinct assessor at the time of listing other property, in the same manner and under the same penalties as is or are provided for listing other property, all dogs he or she may own or keep, and on which the following tax shall be levied and collected, for the use and benefit of the common schools of the county in which such dogs are kept or owned: for each dog, one dollar, and for each slut or bitch, two dollars.

Amount of tax.

Such tax to be a lien on all of owner's property.

SEC. 89. Said tax shall be a perpetual lien on all property, real or personal, which the owner of such dog or dogs may have at the time of assessment or at any subsequent time, and if not paid shall be collected by distress and sale at the same time and in the same manner that other delinquent taxes are collected, together with the same penalty.

How collected.

No penalty for killing dogs not listed, etc.

SEC. 90. No person shall be liable to prosecution for damage for killing any dog found running at large which has not been listed, or upon which said tax has not been paid after the same has become delinquent.

COUNTY TREASURERS.

Shall collect taxes, and keep his office at the seat of justice. Accounts how kept.

SEC. 91. The county treasurer shall be the collector of taxes; he shall keep his office at the seat of justice for his county, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom and on what account received, in cash, warrants, county or road orders; and if in warrants or orders, their kind, number, or other designation: amounts for which they were drawn, interest due thereon, and the amounts of the receipts thereon endorsed, if any; also of all disbursements by him made, showing the time when, to whom, on what account and the amount paid; and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation, shall be exhibited in separate and distinct columns, or accounts, and so as to show whether the same was received or paid in cash, or warrants or orders, and if either of the latter, their designation and other particulars as above required; and the county treasurer shall at all times exhibit such accounts, when desired, to the territorial, county or school officers, entitled to receive the same, and shall at any time pay over the balance in his hands to them, upon receiving proper vouchers.

Shall give duplicate receipts for all money.

SEC. 92. When any money shall be paid to the county treasurer, he shall make the proper duplicate receipts for the same, as in the case of the payment of taxes, and shall give one of said receipts to the person paying said money and the other to the county clerk within six days thereafter.

Books, etc., to be open to inspection of commissioners.

SEC. 93. The books, accounts and vouchers of the county treasurer, and all moneys, warrants or orders remaining in the treasury, shall at all times be subject to the inspection and examination of the county commissioners.

Of territorial or county warrants or orders.

SEC. 94. When the county treasurer shall receive any county or territorial warrants, or orders, on which any interest is due, he shall note on such warrants or orders the amount of interest by him paid thereon, and shall enter in his account the amount of such interest, distinct from the principal.

All orders paid to be marked "redeemed"

SEC. 95. When the county treasurer of any county shall pay any county order drawn on him by the county commissioners, or when he shall take or receive any such order in payment for any tax, he shall write on the face of such order, "Redeemed," and the date of redemption, and shall sign his name thereto.

Proceedings when county order

SEC. 96. When any person desiring to pay any taxes due and unpaid, shall present a county order to the treasexceeds amount of tax to be paid.

urer of any county in payment for such tax, which shall exceed the amount that such treasurer is authorized to receive in county orders in payment for such tax, he shall endorse, on the back of such order in part payment, the amount he is authorized by law to receive, and date the same. Said treasurer shall take two receipts from the holder of such order, for the amount so endorsed and paid, showing the date of the endorsement, a full description of such county order, including the date thereof, to whom given, the amount for which it was given, and all the endorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher.

Deputies may be appointed; treasurer responsible for their official acts.

SEC. 97. Each county treasurer may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security, from the person so appointed, as he shall deem necessary for his indemnity, and shall, in all cases, be liable and accountable for the proceedings and misconduct of his deputies.

Equal proportions of all taxes to be paid, except school tax.

SEC. 98. When any person shall desire to pay only a portion of the tax charged on any real estate, such person shall pay a like proportion of all the several taxes charged thereon; and no person shall be permitted to pay one of said taxes without paying the others, except the tax for the erection, completion or repair of school houses, the collection of which shall have been enjoined by law.

To make sale of delinquent lands, etc.

SEC. 99. The county treasurer shall make sale of delinquent lands and town lots in the manner and at the times required by law.

Shall deliver books, papers, etc., to successor

SEC. 100. Each county treasurer on going out of office shall deliver to his successor in office all public moneys, books, accounts, papers and documents, in his possession; and in case of the death of any county treasurer, his legal representatives shall, in like manner, deliver up all such moneys, books, accounts, papers and documents, as shall come into their possession.

County clerk to enter suit against defaulting

SEC. 101. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county clerk, on receiving instructions for that purpose from the territorial auditor or from the county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties, or any of them, in the district court of his county.

treasurer or his sureties.

Treasurers may be removed where suits have been brought against them.

SEC. 102. Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the county commissioners of such county may, at their discretion, remove such treasurer from office, and appoint some suitable person to fill the vacancy thereby created, as hereinbefore provided.

Additional security may be required of treasurer by commissioners.

SEC. 103. The county commissioners of any one of the counties of this territory may require the county treasurer to give additional freehold sureties whenever, in the opinion of a majority of said commissioners, the existing security shall have become insufficient; and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners, or a majority of them, may direct, whenever, in their opinion, more money shall have passed, or is about to pass, into the hands of said treasurer than is or would be recovered by the penalty in the previous bond.

Penalty in case of failure to give such security when required.

SEC. 104. If any county treasurer shall fail or refuse to give such additional security or bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed, agreeably to the provisions of law.

Treasurers shall not purchase county orders.

SEC. 105. No county treasurer shall, either directly or indirectly, contract for or purchase any order or orders, issued by the county of which he is treasurer, at any discount whatever upon the sum due on such order or orders; and if any county treasurer shall so contract for or purchase any such order or orders, he shall not be allowed, in settlement, the amount of said order or orders, or any part thereof, and shall also forfeit the whole amount due on such order or orders, to be recovered by civil action, at the suit of the territory of Nebraska, for the use of the county.

Treasurers shall not have credit for interest on orders, unless, etc.

SEC. 106. The county treasurer, on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon.

Penalty for loaning or using public moneys.

SEC. 107. If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own individual purpose, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars, nor less than one hundred dollars, to be recovered in an action at law at the suit of the territory of Nebraska, for the use of the county.

When moneys belonging to cities, etc., shall be paid over.

SEC. 108. Each county treasurer shall, immediately after the annual settlement with the county commissioners of his county, on demand and presentation of the order of the county clerk, issued by direction of the county commissioners therefor, pay over to the district or precinct treasurer, city treasurer, or other proper officer, all moneys in the county treasury belonging to any district, precinct, city, town or school district: *Provided*, That the moneys mentioned in this section may, by the direction of the proper local officers, remain in the county treasury, to be thence drawn by the proper local treasurer, on the order of the county clerk as aforesaid.

Proviso.

Clerk and treasurer to make annual exhibit

SEC. 109. The county clerk and county treasurer conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, and also the assets and liabilities at the time of making out the same; said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account, and also the liabilities of the county stated in detail, and the assets of every kind as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in, and the kind of funds; said exhibit shall be made out annually, and be posted up in the office of the treasurer, on the first Monday in October.

Penalty for using or loaning public money.

SEC. 110. If any county treasurer, or other officer or person, charged with the collection, receipt, safe keeping, transfer or disbursement of the public money, or any part thereof, belonging to the territory or any county, precinct, district, city, town or school district in this territory, shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever; or shall use by way of investment in any kind of security, stocks, loan, property, land or merchandise, or in any other manner or form whatever; or shall loan, with or without interest, to any company, corporation, association or individual; or shall deposit with any company, or corporation, or individual, any portion of the public money, or other funds, property, bonds, securities, assets or effects of any kind, received, collected or held by him for safe keeping, transfer or disbursement, or in any other way or manner, or for any other purpose; or if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said moneys, or other property as aforesaid, as shall be thus converted, used, invested, loaned, deposited, or paid out as aforesaid, which is hereby declared to be a high crime and misdemeanor, and upon prosecution, trial by indictment and conviction thereof before any court of competent jurisdiction in this territory, such county treasurer or other officer or person shall be sentenced to imprisonment in the penitentiary, and kept at hard labor, for a term of not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled, as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money, or other funds, property, bonds or securities, assets or effects, of any kind as aforesaid, have been so embezzled. And in

Penalty for advising such loan.

all cases, such fine so operating as a judgment, shall only be released or entered as satisfied by the party or parties in interest, as aforesaid.

CHAPTER XLVII.

ROADS.

Duty of commissioners.

SECTION 1. In the establishment of all precinct, county, territorial and state roads, the commissioners appointed to superintend the viewing and location of such public roads shall employ a competent surveyor, with a sufficient number of assistants, to carry on and perfect a complete field survey of said roads.

Surveyor book, how furnished.

SEC. 2. The surveyor shall provide himself with a well bound book, at the expense of the county, in which he shall enter the field notes of all roads surveyed by him.

Shall establish starting point, etc.

The starting point of all surveys of roads shall be permanently established by taking bearings and distances of one or more permanent objects, and plainly marking the same, and noting a description of such objects in the field notes.

How he shall proceed.

Having fixed the starting point, he shall survey the same by running the west line of the road, if the same runs north and south, and the north line if it runs east and west, by courses and distances, and shall cause to be set in each angle a good substantial post or stake of durable wood, plainly marked or numbered, commencing at the starting point,

Shall note intersection of government lines.

and shall note the intersection of all lines of government surveys, where the same can be satisfactorily ascertained.

Roads, width and staked line.

SEC. 3. All county, territorial and other public roads shall have a width of sixty-six feet, and the staked line marking such road shall be on the northern edge of the said sixty-six feet, if the road is running east and west, and on the western edge if the course of the road is north and south.

Surveyor to make plat.

SEC. 4. The surveyor having completed any road survey shall make an accurate plat of the same, which plat, if of a territorial road, together with a copy of the field notes, shall be filed in the office of the secretary of the territory, and a copy of such portions of the same as may be embraced within the limits of the different counties through which the road may pass, shall be filed in the office of the county clerk of each county respectively; and if such road is a county road, the plat and a copy of the field notes shall be filed in the office of the clerk of the county in which such road is located.

Commissioners may alter road districts.

SEC. 5. The commissioners of the several counties shall have power to alter the road districts as may seem to them proper: *Provided, however*, That in no case shall any road district be so constituted as to be within the limits of two distinct voting precincts; and it shall be the duty of the county clerk, upon application, to furnish each supervisor with a particular description of the boundaries of his district.

Duties of supervisors.

SEC. 6. It shall be the duty of each supervisor to notify all able bodied male residents of his district, between the ages of twenty-one and fifty years, to perform one day's labor, of eight hours, upon the roads, under his direction, at such times and places as he may deem for the public convenience, giving them at least three days notice to that effect: *Provided*, That all persons over the age of fifty years are exempted from paying poll tax for the benefit of roads, or of performing said one day's labor in lieu thereof.

Who is exempt from road work.

Penalty in case of failure to work.

SEC. 7. If any person liable to work on the roads, after being duly notified as above provided, shall neglect or refuse to perform labor, by himself or an equivalent substitute, or to pay one dollar in money in lieu thereof, or send a satisfactory excuse to said supervisor within five days thereafter, it shall be the duty of such supervisor to collect the same, and costs, by suit before any justice of the peace of the county in which his district is situated; and the delinquent list, furnished by the supervisor under oath, shall be received in evidence on the trial of the case, and no personal property shall be exempt from sale to satisfy said tax and costs of suit.

Further duties of supervisors.

SEC. 8. The supervisor shall give three days notice to all persons owning lands and living in his district, personally, or by leaving a written or printed notice at each person's usual place of residence, specifying the time and place where such tax may be paid in work. Said supervisor shall allow all persons working out said specific tax under his direction, the sum of one dollar and fifty cents per day, each; and for each team, with a wagon, plow or scraper, one dollar and fifty cents per day.

Supervisors may procure plow, scrapers, etc

SEC. 9. The supervisors of the respective districts are hereby authorized to procure, if they deem it necessary, a plow and one or more scrapers for the use of the road district; the cost thereof to be paid out of the road fund of the district, and allowed by the county commissioners in settlement with the supervisor.

Penalty in case of failure to keep roads in reasonable repair.

SEC. 10. If any supervisor shall neglect or refuse to keep the roads of his district in good repair as the number of hands and amount of road tax under his control would reasonably enable him to do, he shall be liable on his official bond to pay a fine of not less than five nor more than fifty dollars, to be recovered by civil action before any justice of the peace in the county; which fine, when collected, shall be paid into the district road fund for said supervisor's district.

Shall procure guide-boards.

SEC. 11. It shall be the duty of the supervisors of the several road districts to cause a guide-board to be placed at the beginning, terminus and intersection of any county and territorial road in his district; which guide-board shall be attached to durable posts, or other permanent fixtures, and the names of and distances to the principal towns or places on said roads shall be legibly painted thereon.

Penalty for destroying guide-boards.

SEC. 12. If any person shall willfully injure or destroy the posts or guide-boards so erected for the public use, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace in the county, shall be fined for said offense in a sum not less than five nor more than twenty dollars, and costs of action.

Moneys collected to be expendep on roads.

SEC. 13. All moneys collected by the supervisor of roads, in lieu of labor in discharge of poll tax, and the proceeds of all fines collected under the provisions of this chapter (not otherwise provided), shall be expended by the proper supervisor for the improvement of roads in his district.

Supervisors to make annual settlement with county commissioners.

SEC. 14. Supervisors of roads shall make an annual settlement, under oath, with the board of county commissioners, on the first Monday of December, showing the amount of money which has come into their hands by virtue of their office, and how the same has been expended: *Provided, always*, That the county commissioners, if they deem it expedient, shall have power to cite any supervisor to appear before them at any other time, and make settlement as herein provided, giving him reasonable notice thereof; and the said supervisor shall be allowed the sum of one dollar and fifty cents per day, payable as hereinafter provided, upon the order of the county commissioners, for all time necessarily engaged in overseeing the expenditure of work on the roads, not exceeding the sum of twelve dollars to each United States township within his district, and the further sum of five dollars for giving notice as provided in this chapter, and making settlement as required by law, after deducting the one day's labor required by this chapter, to be performed in discharge of poll tax; and in default of making such settlement, he shall forfeit all claim to allowances for extra services.

One-third of all moneys paid into county treasury from road tax to constitute county road fund.

SEC. 15. One-third of all moneys paid into the county treasury in discharge of road tax, shall constitute a county road fund, which shall be at the disposal of the county commissioners for the general benefit of the county, for road purposes; the other two-thirds of all moneys paid into the county treasury in discharge of road tax, shall constitute a district road fund, which shall be expended only in that district from which it was collected, and only for the following purposes:

How expended.

First. For the construction and repair of bridges and culverts.

Second. For the payment of damages of the right of way of any county road.

Third. For the payment of wages of supervisors, and for the expense of procuring the necessary guide-boards.

Fruoth. For the payment of the wages of commissioners of roads, surveyor, chainmen, and other persons engaged in locating or changing any county road.

Proviso.

Provided, however, That the county commissioners shall have power, upon receiving a petition signed by at least two-thirds of the qualified electors of any district, to order that any road moneys in the treasury belonging to the district be expended in any other district, under the direction of the proper supervisor thereof: *Provided, further,* That the county commissioners may levy an additional cash tax for bridge purposes, not to exceed five mills on the dollar of the assessed value of all taxable property, to be levied and collected as other taxes, which special tax, when so collected, shall be exclusively applied to building or repairing permanent and substantial culverts or bridges, under the direction of the county commissioners: *And provided further,** That the county commissionors of the several counties in this territory be and they are hereby authorized in their discretion to build or repair any bridge or bridges within the limits of any incorporated town or city within their respective counties.

Further proviso.

County commissioners may build bridges within incorporated towns.

Commissioners may let contracts for repair of roads to lowest bidder.

SEC. 16. The county commissioners may let contracts to the lowest competent bidder, for the improvement of such roads as may be of general necessity, and pay for the same by orders on the county treasury, payable out of the county road fund; but no contract shall be entered into for a greater sum than double the amount of money on hand in the county road fund; and every bidder, before entering on any work pursuant to contract, shall give bond to the county, with at least two good and sufficient sureties, in any sum double the amount of the contract; which bond shall be approved by the county commissioners, conditioned for the faithful execution of the contract.

In case of sudden damage, powers of supervisor.

SEC. 17. In case of any sudden damage or injury to any bridge, culvert or road, the supervisor may, on one day's notice, call out any and all able bodied men under fifty years of age in his district, (but not more than two days at any one time without their consent,) to effect all repairs immediately necessary thereon; and persons so called out shall be entitled to receive two dollars per day, from the district road fund of the proper district, upon certificate thereof by the supervisor to the county commissioners, who shall allow the same as far as it may be just, and issue an order therefor.

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* Act approved February 9, 1866.

Fine in case of failure to turn out.

SEC. 18. If any able bodied man, when duly summoned as provided in the preceding section, fail to appear and labor diligently, by himself or his substitute, or send satisfactory excuse therefor, he shall be liable to a fine of five dollars, to be recovered by civil action before any justice of the peace of the county.

Roads, how opened or discontinued.

SEC. 19. Whenever the inhabitants in any county desire the opening of a new road, or the discontinuance or change of any road heretofore established, they shall give at least twenty days notice, by posting a notice on the court house door, and at three other public places in the vicinity of the road sought to be located, changed, or discontinued, setting forth the time when they will apply by petition to the board of county commissioners, giving a particular statement of the location, change or discontinuance sought to be effected.

County commissioners to examine petitions, and may order a view, etc.

SEC. 20. Upon the presentation of a petition, signed by at least ten land holders, residents of the county, after notice given as provided in the preceding section, the board of county commissioners shall proceed to hear the parties interested in the case, and if, in their judgment, it is probable that the location or change proposed will advance the interests of the county, or is essential to the interests of the applicant, they shall appoint a competent and disinterested person a commissioner, who, after being duly sworn to faithfully discharge his duty, without fear, favor, or hope of reward, shall proceed to view the road proposed; and if, in his opinion, the public good requires the proposed new road, or change in a road already established, he shall proceed to lay out, mark and plat the same according to law; and for this purpose may employ a surveyor, two chain carriers, and one axeman, who shall be allowed by the county commissioners such compensation for their services as shall be just and reasonable.

Commissioner who makes survey to file plat with county clerk.

SEC. 21. It shall be the duty of the commissioner, within twenty days after making the location and survey, as provided in the preceding section, to make out and file his report, together with the plat and field notes, with the county clerk, who shall record the report in a book to be kept for that purpose, after which such location and survey shall be deemed a county road.

Where report is adverse, petitioner to pay all costs.

SEC. 22. If, in the opinion of the commissioner, the public good does not require the location or change proposed to be made, he shall so report to the county clerk without unnecessary delay, who shall record the report as above provided, and the petitioners shall pay all costs accruing in the case; and to this end, the board of county commissioners shall require two or more of the petitioners to enter into bond, to be approved by them, payable to the county, conditioned that they will pay all costs which may accrue if the case is decided adversely to their petition.

County commissioners may resurvey or relocate roads already established.

SEC. 23. The county commissioners shall have power to resurvey and relocate territorial roads already or hereafter to be established: *Provided*, No such relocation shall be made which shall change the location of the same at the intersection of county lines without a corresponding change and similar relocation by the county commissioners of such adjacent county or counties.

Of damages.

SEC. 24. When any person shall demand damage for the right of way for any county road, if the county commissioners think the same is not exorbitant, they shall order the same to be paid out of the district road fund of the district or districts in which said land is situated. If exorbitant damages are demanded, it shall be their duty to appoint three disinterested persons, tax-payers and residents of the county, who, after being sworn to faithfully discharge their duty, without fear, favor, or hope of reward, shall appraise said damages; and their award, not exceeding the amount claimed, shall be paid to said claimant in full satisfaction for such damages: *Provided*, That in no case shall damages be allowed or recovered unless the claimant file his petition therefor with the county clerk within thirty days after the filing of the report of the commissioner locating such road: *Provided, further*, That any claimant

Proviso.

Appeal.

aggrieved under any award made as herein provided, may have an appeal to the district court in which such county is situated, if such appeal shall be entered and bond given within thirty days after said award is made; which bond shall be made payable to the territory of Nebraska, and signed by two or more good and sufficient sureties, in such sum as shall be approved by the county commissioners, conditioned to pay all costs and damages that may be adjudged against said claimant on the trial of such appeal.

Commissioners appointed.

SEC. 25. When the lands of any person shall be surrounded, or inclosed, or be shut out and cut off from a public highway by the lands of any other person or persons who refuse to allow to such person a private road to pass to or from his or her said land, it shall be the duty of the county commissioners, on petition of any person whose land is so surrounded or shut out, to appoint three disinterested householders of the precinct in which the land lies, as commissioners to view and mark out a road from the land of the petitioner to the nearest public highway, and to assess the damages the person will sustain through whose land the road will pass.

Notice to be given.

SEC. 26. The person desiring to secure the right of way shall give the person or persons through whose lands the road will run at least two days notice of such intended application by leaving, or causing to be left, a written notice at his or their usual place of abode; and satisfactory evidence that such notice has been given shall be presented to the board before commissioners shall be appointed.

Oath.

SEC. 27. The commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath before some judge or justice of the peace, that they are not interested nor of kin to either of the parties interested in the proposed road, and that they will faithfully and impartially view and mark out said road to the greatest ease and convenience of the parties, and as little as may be to the injury of either, and assess the damages which will be sustained by the party through whose lands it will run.

Damage assessed.

SEC. 28. Said commissioners shall make out a report of their proceedings, stating particularly the course and distance of said road, and the amount of damage assessed, which report, together with a certificate of the oath, shall be returned to the county commissioners, and filed by the county clerk.

Penalty. SEC. 29. If the report be approved by the county commissioners, and the petitioner shall produce satisfactory evidence that he has paid the damages assessed, (or tendered payment if the party refuse to receive it,) and all costs attending the proceedings, the county commissioners shall grant an order to said petitioner to open a road not exceeding fifteen feet in width; and if any person or persons obstruct said road, such person or persons shall be liable to all the penalties for obstructing a public road: *Provided, however*, If such road shall pass through any inclosure, and it shall be required by the owner thereof, the person applying for such road shall put up and keep at each entrance into such inclosure a good and substantial swinging gate: *Provided further*, That either party may appeal from the decision of the county commissioners in like manner as prescribed in case of county roads.

Right of way. SEC. 30. Upon the establishment of the right of way, as in this chapter provided, the same shall vest in the party and his or her heirs or assigns forever.

Same. SEC. 31. Any person desiring to secure the right of way to a public mill, or any person owning separate tracts of land, may secure the right of way by proceeding as in this chapter provided for securing the right of way to a public highway.

CHAPTER XLVIII.

SCHOOLS.

Each precinct to be one district. SECTION 1. Each and every precinct in any organized county in the territory shall compose but one school district for all purposes connected with the general interests of education in the precinct, and shall be subject to the management and control of a board of education; and the several school districts and fractional parts thereof, which now are or may hereafter be established in the several precincts of the territory, shall be regarded as subdistricts, and be subject to the management and control of local directors as hereinafter provided: but nothing contained in this chapter shall be so construed as to give to the precinct board of education, or to local directors in subdistricts, jurisdiction over any territory in the precinct included within the limits of any city or incorporated village with the territory annexed thereto for school purposes.

To be controlled by board of education.

Subdistricts to be controlled by local directors.

Incorporated cities excepted.

ELECTION OF LOCAL DIRECTORS.

SEC. 2. All unorganized subdistricts shall be organized by holding a school meeting of the legal voters of said subdistrict on the first Monday of March, who, when assembled, shall organize by the appointment of a chairman and secretary, and proceed to elect by ballot three school directors for such subdistrict. Of those so elected, the person receiving the highest number of votes shall hold his office for three years, the person receiving the next highest number shall hold the office for two years, and the person receiving the next highest number shall hold the office for one year; and each shall continue in office until his successor is elected and qualified. In case two or more persons so elected have received an equal number of votes, the duration of their respective terms of office shall be determined by lot in the presence of the chairman and secretary of the meeting; and annually thereafter in the same manner, on the first Monday in March, there shall be elected in each subdistrict of the proper precinct, one school director for the term of three years; and the minutes of the proceedings of any such subdistrict meeting shall be signed by the chairman and secretary, and delivered to the directors who shall have been elected as aforesaid, to be recorded by the clerk in the records of the subdistrict, and the said clerk of the subdistrict shall forthwith certify to the precinct clerk, the names of the local directors so elected, specifying the term for which each was elected. If the directors of any subdistrict so elected shall deem it expedient, they

Organization of school meeting.

Terms of office.

Tie votes, how decided

One director to be elected annually.

Election returns.

Notice of election.

may designate the specific hour of the day on which the annual election for such subdistrict shall be held, and in such case, shall cause five days notice thereof in writing to be posted up in three of the most public places in such subdistrict.

Directors to take oath of office.

SEC. 3. The said directors, within five days after their election, shall take an oath or affirmation to support the constitution of the United States and the organic law of this territory, and faithfully and impartially to discharge the duties of their offices, which said oath the directors are authorized to administer to each other. And in case a vacancy shall occur in the office of director, by death, resignation, refusal to serve, or otherwise, it shall be the duty of the precinct clerk to fill such vacancy within ten days after being informed thereof, by appointment for the unexpired term.

Vacancies, how filled.

Special election.

SEC. 4. If the qualified voters of any subdistrict shall fail to meet and elect school directors as prescribed in the second section of this chapter, it shall be lawful for any three qualified voters of such subdistrict to call a special meeting of the voters of such subdistrict, for the purpose of electing directors, on first giving five days notice in writing of the time and place of holding such meeting, by posting the same in three of the most public places in such subdistrict; and the directors so elected at such special meeting, shall hold their offices for the same periods of time as if elected on the first Monday of March, as prescribed in said second section, except that their said terms of office shall be considered as having commenced on the first Monday of March next preceding the time of holding such special meeting.

Five days notice to be given.

Organization of board.

SEC. 5. It shall be the duty of the directors, any two of whom shall constitute a quorum, to meet as soon as practicable after having been elected and qualified, at such place as may be most convenient in the subdistrict, and organize by appointing one of their number clerk of the subdistrict, who shall hold his office for the term of one year, and who shall preside at the official meetings of the directors, and record their proceedings in a book to be provided for that purpose, together with the minutes of the

Appointment of clerk.

proceedings of the annual school meetings held in the subdistrict by the qualified voters thereof, which shall be a public record; and all such proceedings, when so recorded, shall be signed by the clerk of the proper subdistrict. The directors may meet as frequently as they may think necessary for the transaction of business, and fill any vacancy in the office of clerk which may occur in the subdistrict, or, in case of his absence, either of the above directors may officiate temporarily in his place.

Meetings.

DUTIES OF LOCAL DIRECTORS.

SEC. 6. In shall be the duty of the school directors in each subdistrict to take the management and control of its local interests and affairs; to employ teachers, and certify the amount due them for services to the precinct clerk, who shall draw an order on the precinct treasurer for the amount; to dismiss any teacher, at any time, for such reasons as they may deem sufficient; and to visit the school or schools of the subdistrict, at least twice during each term, by one or more of their number, with such other person or persons competent to examine pupils in their studies, as they may choose to invite.

To take management of affairs.

Employ and dismiss teachers.

Visit schools.

SEC. 7. It shall be the duty of the directors, in their respective subdistricts, to negotiate and make, under such rules and regulations as the precinct board of education may prescribe, all necessary contracts in relation to providing fuel for schools, repairing buildings or furnishing school houses, purchasing or leasing school house sites, renting school rooms, and making all other provisions necessary for the convenience and prosperity of schools in their subdistricts; but no contracts shall be made by the directors, under the provisions of this section, for the payment of money from the precinct school fund applicable to such purposes, which in any one year shall exceed the amount distributable to the subdistrict in proportion to the enumeration of scholars resident therein, without first obtaining the consent or order of a majority of the precinct board of education; and all contracts made by the local directors under the provisions of this section, shall be reported to the said board at their next meeting after the making of

Shall provide fuel, etc.

Contracts limited.

Contracts to be reported.

such contracts, and said precinct board of education, in their corporate capacity, on the part of the subdistrict, shall be held responsible for the performance thereof.

Enumeration of youth.

Return of enumeration.

Directors shall make annual statement.

Clerk to procure enumeration in default of directors.

Precinct clerk to report abstract of enumeration.

SEC. 8. It shall be the duty of the directors in each subdistrict to take, or cause to be taken, annually, between the fifteenth and thirtieth days of September, an enumeration of all the unmarried white youth, noting them separately, between the ages of five and twenty-one years, resident within such subdistrict, and not temporarily there, designating between male and female, and return a certified copy thereof to the precinct clerk, on or before the first Monday in October; and the directors shall, on or before the third Monday in October, report to the clerk of the board of education a statement of the amount of money expended, and for what object, during the past school year, and the amount of money necessary to be expended during the current school year, the value and condition of all school house sites, furniture, library, apparatus, etc., all contracts entered into by them, and generally upon all matters of interest connected with the schools in their subdistrict. And in case the directors in any subdistrict shall fail to take and return the enumeration aforesaid, it shall be the duty of the precinct clerk to employ a competent person to take the same, and allow him a reasonable compensation for his services, and shall proceed to recover the amount so paid for such services in a civil action before any court having jurisdiction, in the name of the territory of Nebraska, against said directors in their individual capacity; and in such suits said clerk shall be a competent witness; and the money so collected shall be applied to the use of the common schools in the proper precinct. The precinct clerk shall make an abstract of the enumeration so returned to him, designating the number of youth in such subdistrict, and transmit such abstract, duly certified, to the county clerk, within three days after the third Monday in October.

PRECINCT BOARD OF EDUCATION.

Of whom composed.

SEC. 9. The precinct board of education shall consist of a local director from each subdistrict of the precinct, who has been appointed clerk in his subdistrict, a majority of whom shall constitute a quorum for the transaction of business, and from their number they shall elect a chairman, precinct clerk and precinct treasurer; the clerk and treasurer each to give bond to the territory in twice the probable sum that will pass through his hands, which bonds shall be filed with the county clerk. It shall be the duty of said precinct clerk to be present at the meetings of the board, and to record in a book to be provided for the purpose, all of their official proceedings, which shall be a public record, open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairman and clerk.

Quorum.

Bond of clerk and treasurer.

Record of proceedings.

SEC. 10. The said precinct board of education in each precinct of the territory, and their successors in office, shall be a body politic and corporate in law, and as such may contract and be contracted with, sue and be sued, plead and be impleaded in any court of law or equity in this territory, and may receive any gift, grant, donation or devise, made for the use of any school or schools within their jurisdiction; and moreover, they shall be and are hereby invested in their corporate capacity with the title, care and custody of all school houses, school house sites, school libraries, apparatus or other property belonging to the school districts as now organized, or which may hereafter be organized, within the limits of their jurisdiction, with full power to control the same in such manner as they think will best subserve the interests of common schools and the cause of education; and when, in the opinion of the board, any school house or school house site has become unnecessary, they may sell and convey the same in the name of the precinct board of education of the proper precinct; such conveyance to be executed by the chairman and clerk of said board, and shall pay the proceeds to the precinct treasurer of the proper precinct for the benefit of schools; and all conveyances of real estate which may be made to said board, shall be to said board in their corporate name, and to their successors in office.

The board to be a body politic and corporate.

Trustee duties of board.

May sell school houses and sites.

Conveyances, how executed.

SEC. 11. It shall be the duty of the precinct board of education to hold regular sessions on the third Monday of April and on the third Monday of October, in each year,

Regular sessions of board.

at such place in the immediate neighborhood as may be convenient for the transaction of any business which may be necessary in relation to the subject of either the primary or graded schools of the precinct, with power to adjourn from time to time, or to hold special meetings at any other time or place within the proper precinct, as they may think desirable for the transaction of business as aforesaid, and at all such meetings, they shall appoint one of their number to the chair, and in case of the absence of the precinct clerk, may appoint one of their number to serve temporarily as clerk.

May hold special meetings.

Clerk *pro tem.*

Board to have control of central or high schools

SEC. 12. The precinct board of education shall have the management and control of all the central or high schools of their proper precinct, which may be established therein under the authority of this chapter, with full power in respect to such schools, to employ, pay and dismiss teachers, to build, repair and furnish the necessary school houses, purchase or lease sites therefor, or rent suitable school rooms, and make all other necessary provisions relative to such schools as they may deem proper; and it shall also be the duty of said board of education to exercise all the powers conferred on local directors in respect to subdistrict schools, whenever such local directors shall neglect to discharge their duties in any subdistrict as required by this chapter; and it shall also be the further duty of said board to prescribe rules and regulations for the government of all the common schools within their jurisdiction; said board of education may provide for German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together, and, if the board shall deem it necessary, they may appoint one of their number the acting manager of schools for the precinct, who shall do and perform all such duties as the board may prescribe, in relation to the management and supervision of the different schools and the educational interests of the precinct, and may allow him a reasonable compensation for his services.

To purchase or lease school houses or sites.

May perform duties of subdistrict directors.

May provide German schools.

Acting manager of schools.

Maps of precinct.

SEC. 13. The said board shall prepare, or cause to be prepared, a map of their precinct, as often as they may deem necessary, on which shall be designated the subdistricts of the precinct, which they may change or alter at any regular session, and the number of scholars assigned to each; but no subdistrict shall contain within its limits less than ten scholars by enumeration, except in cases where, in the opinion of the board, it is necessary to reduce the number; and it shall be the duty of the board to establish a school in each subdistrict of the precinct, of such grade as the public good in their opinion may require; and in the location of primary schools, or schools of higher grade, the board shall have reference to population and neighborhood, paying due regard to any school house already built, or site procured, as well as to all other circumstances proper to be considered so as to promote the best interests of schools.

No subdistrict to contain less than ten scholars.

SEC. 14. The board shall have power to assign such number of scholars to the several primary schools as they may think best, and when such assignment has been made, shall furnish the teacher a list of the scholars so assigned; and the board shall also have full power to regulate and control the admission of scholars to schools of a higher grade, according to age and attainments, and may admit scholars over twenty-one years of age, and may suspend, or authorize the local directors to suspend, from the privileges of either of the schools, any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session of the school.

Assignment of scholars.

May suspend scholars.

SEC. 15. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining precinct, or whenever it may be desirable to establish a school composed of parts of two or more precincts, it shall be the duty of the respective boards of the precincts in which such persons reside, or in which such schools may be situated, or of the precincts or parts of which the school is to be composed, to transfer such persons for educational purposes to the precinct in which such school house is or may be located; but the enumeration of scholars shall be taken in each precinct as if no such transfer had been made, and such school, when so composed, shall be supported from the school funds of the respective precincts from which the scholars may have been transferred; and the board of that precinct in which the

Schools made up from two or more precincts.

Scholars transferred to other districts.

school house is situated shall have the control and management of such school, and the board of the adjoining precinct or precincts so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the county clerk of their proper county as a part of their annual estimates for school purposes, and draw orders on their respective precinct treasurers for such sum as will be in proportion to the enumeration of scholars so transferred, in favor of the board of that precinct in which such school is located, to be appropriated to the payment of teachers and for other purposes connected with the establishment and maintenance of said school, as far as applicable. Estimates of expenses.

Board to determine text books. SEC. 16. The said board shall have power to determine the studies to be pursued and the school books to be used in the several schools under their control, and shall make and enforce such rules and regulations relative to the use and preservation of the school libraries and apparatus as they may think advisable, and shall appoint, or authorize the local directors to appoint, a suitable person to act as librarian and to take charge of school apparatus, resident at some convenient place in the neighborhood where the school is kept, and may require such librarian to give bonds for the faithful discharge of his duties, and allow him such compensation as they may think desirable. School libraries and apparatus. Appointment of librarian. Librarian's bond.

REPORT REQUIRED OF TEACHERS.

What report must show. SEC. 17. It shall be the duty of the school teacher to make out and file with the precinct clerk, at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the precinct board or local directors; and until such report shall have been certified and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services. Not to be paid until report is filed.

STATEMENT REQUIRED OF BOARD OF EDUCATION.

Board of education to report to county clerk.

SEC. 18. The board of education in each precinct shall prepare, or cause to be prepared, and forwarded to the county clerk at the same time when the return of the enumeration of scholars is required to be made, a statement exhibiting the number of children in the precinct between the ages of five and twenty-one years, distinguishing between male and female, the number of schools, specifying the different grades, the number of teachers, male and female, the number of children, male and female, who have attended school during the past year, the average attendance, the length of the terms of schools, compensation of teachers, male and female, the number and condition of the school houses and furniture, and the estimated value thereof, the number and condition of the books in the school libraries, the number of libraries, the kind of school books used in the schools, the number and value of school apparatus, and the full accounts of the expenditures for school purposes, together with such other statistics and information in relation to schools as the territorial auditor may require.

CENTRAL OR HIGH SCHOOLS.

Establishment of graded schools.

SEC. 19. Each precinct board of education shall have power, as hereinafter provided, to establish in their respective precincts such number of graded schools or such modifications of them, as the public interest may require; and in case of the establishment of such graded schools, it shall be the duty of the board so to classify the children of the precinct as to secure to all, as far as practicable, an equitable participation in the advantage thereof; and the board shall designate the subdistricts by numbering them, and schools of a higher grade than primary, shall be known by the appellation of central or high schools.

Subdistricts how designated.

High schools how established.

SEC. 20. Whenever, in the opinion of the board of education, it shall become necessary or desirable to provide one or more such central or high schools in their respective precincts, the said board shall estimate the probable cost thereof, and call a special meeting of the qualified voters of the precinct, (and who are not residents of any of the territory or districts named in the first section of this chapter, over which the jurisdiction of the precinct and local directors is excluded,) at the usual places of holding elections, first giving twenty days notice of the time and object of holding such meeting, by posting the same in some public place in each of the several subdistricts of the precinct, in which notice the amount or rate of tax as estimated by the board shall be stated; and the electors, when convened in pursuance of such notice, shall decide by vote any question which may be deemed important in relation to the cost and location of the building or buildings, or other provisions necessary for the establishment of any such school, and also the amount of precinct tax which may be levied for the purpose, and the chairman and clerk of the board shall be the chairman and clerk of the meeting, and the clerk shall record in the records of the board the action of the meeting, and the board shall be governed by the direction and vote of said meeting in relation to the subjects or matters so submitted.

Notice to be given.

Taxes, how levied.

ANNUAL ESTIMATES BY BOARD OF EDUCATION.

District school taxes

SEC. 21. It shall be the duty of the board of education in any organized precinct in the territory annually to determine by estimate, as nearly as practicable, the entire amount of money necessary to be expended in the precinct for school purposes, other than for the payment of teachers, and also such additional amount as the board may think necessary, not exceeding two mills on the dollar valuation of the taxable property of the precinct, for the exclusive purpose of sustaining teachers in the central or high schools, or for the purpose of prolonging, after the territorial funds have been exhausted, the terms of the several subdistrict or primary schools in the precinct, or for both purposes, as the board may adjudge best, which several amounts of money, so estimated, the board shall make known by certificate in writing, on or before the time required by law for placing on the tax duplicate the territorial and county taxes in each year, including any tax which may have been voted by a special meeting of electors, as provided in the

For teachers in high schools.

preceding section, to the county clerk of the proper county, who shall thereupon assess the entire amount of such estimates on all the taxable property of the precinct, not included in any city or incorporated town or territory annexed thereto, forming any special district, to be entered by said county clerk on the tax duplicate of the county, and collected by the county treasurer at the same time and in the same manner as territorial and county taxes are collected, and when collected, shall be paid over to the treasurer of the proper precinct on the order of the county clerk; and said county treasurer shall be entitled to receive for collection one per cent. on all moneys by him collected for school purposes, and no more.

Report of estimate to county clerk.

How collected.

How paid over.

Treasurer's fees.

SEC. 22. The precinct board of education shall have power, when, in their opinion, justice and equity require it, to estimate separately the cost of purchasing a school house site and erecting or repairing a school house thereon, in any particular subdistrict of the precinct wherein the inhabitants have not heretofore borne a reasonable share of the burden of taxation for such purpose, in comparison with other subdistricts in the precinct, and certify such portion as they may deem just and equitable, of the amount of such estimate, to the county clerk of the proper county, together with a map of the lands and names of the tax payers in any such subdistrict, which amount so certified shall be assessed by the county clerk on the property therein subject to taxation, and placed on the county duplicate, specially to be collected and paid over in the same manner as other school taxes, and to be applied for the specific purpose of providing a school house in the subdistrict.

Estimate for school house in particular subdistrict.

Map of lands to be made.

Assessment of special subdistrict taxes.

SEC. 23. All school funds which may come into the hands of the precinct treasurer, from whatever source, shall be paid out only on the order of the clerk of the board of education, under the direction of the board, except in paying teachers for their services; and the said clerk may, on such teachers presenting their certificates of qualification, and depositing with the clerk true copies thereof, draw the requisite order on the treasurer for any such amount as may have been certified to be due by any two of the local directors of the proper subdistrict in which the teacher was

School funds how paid out.

Funds applicable to the payment of teachers' wages only.

employed; and so much of the school moneys coming into the hands of the treasurer as may be derived from the territorial tax, or from any precinct tax levied for the continuation of schools after the territorial fund has been exhausted, shall be applicable only to the payment of teachers in the proper precinct, and shall be drawn for no other person whatever; and all school funds made applicable to the payment of teachers only, shall be distributed to the several subdistricts and fractional parts thereof, in the precinct, in proportion to the enumeration of scholars, with the exception of so much of the precinct tax as may have been levied and reserved by the board for sustaining teachers in the central or high schools; and such school funds as arise from the sale or rents of sections sixteen and thirty-six, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong. All other school funds of the precinct not raised for the central or high schools, nor made applicable to the payment of teachers, as aforesaid, shall be applied, under the direction of the board, in repairing, building or furnishing school houses, in procuring school house sites, and in making such other provisions for schools in subdistricts of the proper precinct, as may, in the opinion of the board, be necessary, and each precinct board shall make the necessary provisions for continuing the schools in operation in their respective precincts, for at least seven months in each year.

Shall be drawn for no other person.

How distributed.

Moneys arising from sale or rent of school sections.

Funds to be applied to building and furnishing school houses.

Shall continue schools seven months in each year.

DUTIES AND LIABILITIES OF CLERKS.

Clerk to keep record.

SEC. 24. The clerk of the board of education, or any one of the board designated for that purpose, or the acting manager of schools of the precinct, may do and perform all such duties and services connected with the interest of schools as the board may direct, and report the same to the board for their action and approval; and it shall be the duty of the clerk of the board to keep a full record thereof, in connection with the record of the other official proceedings of the board; and in case of failure to keep such record, or other records required by this chapter, the clerk of the board shall be liable in a civil action for all loss or damages that may ensue to any person or persons, or to the

Penalty for neglect.

school district, in the name of such person or persons, or board of school directors, as the case may be, and shall moreover be liable, on complaint filed in the name of the territory of Nebraska before any justice of the peace, or other court having jurisdiction, to a fine not exceeding one hundred dollars, which, when collected, shall be paid over to the treasurer of the proper precinct for the benefit of schools.

Semi-annual settlement with treasurer.

SEC. 25. It shall be the duty of the board of education to make settlements with the precinct treasurer at their regular session in April and October; but if for want of time, or other reason, a settlement cannot be made at the said session, then it shall be the duty of the board to appoint a committee, composed of one or more of their own members, to make such settlement as soon as practicable, and report the result to the clerk of the board, who shall record an abstract thereof in the records of the board.

May appoint committee to make settlement.

TREASURER, AND HIS DUTIES.

Shall give bond.

SEC. 26. The precinct treasurer in each precinct shall be the treasurer of all school funds for school purposes belonging to the precinct, arising from whatever sources, and on his election, and before entering upon the duties of his office, he shall give bond, with sufficient security, in double the probable amount of money that shall come into his hands, payable to the territory of Nebraska, to be approved by the board of education of the precinct, conditioned for the faithful disbursement according to law of all such funds as shall, from time to time, come into his hands; and on the forfeiture of such bond, it shall be the duty of the precinct clerk to prosecute and collect the same for the use of the schools in the precinct. If such precinct clerk shall neglect or refuse so to prosecute, then any freeholder may cause such prosecution to be instituted.

Amount of bond.

Prosecution on bond.

Bond to be filed with county clerk.

SEC. 27. Before the county clerk shall issue to the precinct treasurer any order on the county treasurer for the payment of any school fund belonging to the precinct, such precinct treasurer shall furnish the county clerk with a bond, as provided for in the foregoing section; and the county clerk shall in no case permit the precinct treasurer to have in his hands, at any one time, an amount of school funds over one-half the amount of the penalty in such bond; and the precinct board shall allow the precinct treasurer a compensation equal to one per cent. on all school funds disbursed by him, to be paid on the order of the clerk out of the precinct treasury.

Compensation.

Shall settle with county treasurer semi-annually.

SEC. 28. The precinct treasurer shall, semi-annually, between the first and fifteenth days of April, and between the first and fifteenth days of September in each year, settle with the county treasurer, and account to him for all moneys received, from whom, and on what account, and the amount paid out for school purposes in his precinct; the county treasurer shall examine the vouchers for such payments, and, if satisfied of the correctness thereof, shall certify the same, which certificate shall be *prima facie* a discharge of such treasurer; and no precinct treasurer shall receive from the county clerk an order on the county treasurer for school funds until he shall furnish the county clerk with a certificate from the county treasurer that such settlement has been made; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office, all books and papers, with all moneys or other property in his hands belonging to said precinct or the schools therein, and also all orders he may have redeemed since his last semi-annual settlement with the county treasurer, and take the receipt of his successor therefor, which he shall deposit with the precinct clerk within ten days thereafter; and for making such semi-annual settlement he shall be entitled to receive the sum of one dollar, to be paid out of the county treasury on the order of the county clerk.

Vouchers.

Certificate of settlement.

Shall deliver to his successor all books and papers.

Receipt to be deposited with precinct clerk.

Compensation for settlement.

Penalty for failure to make settlement.

SEC. 29. In case the precinct treasurer shall fail to make such semi-annual settlement within the time prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the territory of Nebraska, and when collected to be applied to the use of common schools in the proper precinct; and it is hereby made the duty of the county treasurer to proceed forthwith, in case of such failure, by suit against such treasurer, before any justice of the peace of his county, to recover the penalty aforesaid; but when it shall appear on trial, to the satisfaction of said justice, that said treasurer was prevented from making such semi-annual settlement, within the time prescribed, by sickness or unavoidable absence from home, and that such settlement has since been actually made, it shall be lawful for the justice to discharge such treasurer on payment of costs.

OF CITIES AND VILLAGES.

SEC. 30. Each city or incorporated village, including the territory annexed to the same for school purposes, not otherwise specially regulated by charter, and which, with the territory annexed, contains not less than three hundred inhabitants, shall be and is hereby created a separate school district, and the qualified voters of such city or village, with the territory annexed, shall, at the same time and in the same manner that local directors of subdistricts of the precinct are elected by the provisions of this chapter, proceed to elect three persons, who shall constitute a board of education for such city or village with the territory so annexed, and such board shall have the same powers, perform the same duties, and be subject to the same penalties, as precinct boards of education: *Provided*, That by agreement between the board of education of the precinct in which such city or village with the territory annexed may be situated, and the board of education of such city or village with the territory annexed, transfers of territory not within the limits of such incorporation may be made to or from the districts provided for in this section.

Cities and incorporated villages to be separate school districts.

Election of board of education.

Transfers of territory.

SEC. 31. Said board of education in any city or incorporated village shall be authorized, when they think it advisable, to divide such city or village into subdistricts; and they may establish schools of different grades, and ordain such rules and regulations for the government and discipline of such schools as they may think conducive to the public good; and it shall be lawful for the precinct board of education in any precinct in which such city or incorporated village is situated, by and with the consent of the board of education of any such city or incorporated village, to transfer thereto, for educational purposes, the scholars of such parts of their respective precincts as lie

Board of education may divide city into subdistricts.

Shall ordain rules and regulations.

May transfer scholars.

adjacent thereto, and all such transfers shall be controlled, and all such schools supported, in the same manner and on the same principles as in case of like transfer for the convenience of schools where two or more precincts join, as provided for in this chapter.

City clerk to be clerk of board of education.

SEC. 32. In all such cities or incorporated villages, the clerk or recorder of such incorporated body shall be the clerk of the board of education, and he shall do and perform all the duties required of the clerk of a precinct board of education, and such other duties as the board of education may from time to time prescribe; and all orders of the board of education for the payment of money shall be countersigned by the clerk or recorder of said incorporation; and it shall be the duty of the treasurer of any such city or incorporated village, to receive and disburse the school funds of such city or village, in the same manner as is required of the precinct treasurers in their respective precincts, and for his services shall be entitled to the same compensation: *Provided*, That the board of education shall require the treasurer to enter into a bond, as required of the precinct treasurers, which, after being approved by the board of education, shall be filed with the county clerk.

City treasurer to receive and disburse school funds

Treasurer shall give bond.

Powers and duties of city board.

SEC. 33. The board of education of any city or incorporated village, shall have and may exercise all the powers which are by this chapter conferred upon precinct boards of education, and shall do and perform the like duties in all respects so far as applicable, and the school fund shall be divided among the subdistricts, so as to make the distribution as nearly equitable as possible. All taxes for building, purchasing, repairing or furnishing school houses and lots, shall be equally assessed on all the property subject to taxation in such city or incorporated village, and the board of education, in expending the same, shall make the necessary provisions for the subdistricts.

School taxes

APPORTIONMENT OF SCHOOL FUNDS.

Territorial treasurer shall apportion school fund semi-annually.

SEC. 34. The territorial treasurer shall, semi-annually, between the first and fifteenth days of April, and between the first and fifteenth days of September, apportion the common school funds among the different counties, upon the enumeration and returns made to him by the territorial auditor, and certify the amount so apportioned to the county treasurer of each county, stating from what source the same is derived, which said sum the several county treasurers shall retain in their respective treasuries from the territorial fund; and any balance that may remain in the hands of any county treasurer, after deducting the amount which his county is entitled to retain, shall be paid over by the county treasurer, upon the order of the territorial treasurer; and the county clerks shall, within ten days after receiving notice of the apportionment by the territorial treasurer, apportion the school fund in their respective counties according to the enumeration and returns in their respective offices; and no precinct or other district, city or village, which shall have failed to make and return such enumeration, shall be entitled to receive any portion of the common school fund. And in making such distribution, each county clerk shall apportion all moneys collected on the tax duplicate of any precinct for the use of schools, to such precinct, and all other moneys for the use of schools in the county, and not otherwise appropriated by law, to the proper precinct; and he shall, immediately after making such apportionment, enter the same into a book kept for that purpose, and shall furnish the precinct treasurers and precinct clerks, treasurers and recorders of incorporated cities or villages, as the case may be, each with a copy of said apportionments, and give an order on the county treasurer to each precinct treasurer, or to such treasurer as may be entitled to receive the same, for the amount of money belonging to his respective precinct, city or village, and take a receipt from such treasurer for the amount thus received; and the said county treasurer shall collect, or cause to be collected, the fines and all other moneys for school purposes in his county, and take all proper measures to secure to each precinct its full amount of school funds. And if it shall be found that the county treasurer is unable to collect, by process of law, fines or other moneys which are by law appropriated for school purposes, then the treasurer may take from the person or persons from whom the fines or other moneys may be due, a bond with good and

County treasurer to pay over balance, on order of territorial treasurer.

Apportionment by county clerk

Precincts and districts failing to make returns shall not receive school funds.

Clerk shall keep record of apportionment; copy to be furnished.

County treasurer to collect all school funds

May take bond to secure

payment of fines. sufficient security, subject to the approval of the county clerk and probate judge, for the prompt payment of the amount due, within a period of not exceeding five years, and the prompt payment of interest, at the rate of ten per cent. per annum, payable semi-annually into the county treasury; which interest shall be applied to the same purposes to which the fines or other moneys would have been applied, if promptly paid; and all county treasurers shall report to the territorial treasurer and to the territorial auditor, semi-annually, on or before the fifth day of May, and on or before the fifth day of November, and at such other times as the auditor may require, a statement, showing the whole amount of moneys collected on account of territorial, county, precinct and district school taxes, and from all other sources respectively, noting all interest collected, separately, and the amounts received on account of licenses, fines, etc., and from all other sources from which school funds are derived, together with a statement showing the amounts paid out, to whom, and on what account.

Treasurers shall report.

RETURN OF ABSTRACT TO TERRITORIAL AUDITOR.

County clerk's report shall contain:

SEC. 35. The county clerk of each county shall, on or before the fifth day of November, annually, make out and transmit to the auditor, an abstract of all the returns of school statistics made to him from the several precincts in his county, and a statement showing the apportionment of the territorial, county and other school funds, to the several precincts and districts in his county; the rates and amounts of the several school taxes levied in the county during the past year; the rate and amount of school taxes levied for the current year; the amount of fees for licenses granted during the past year; the amount of fines assessed, and a statement of all other moneys due the school fund, and a general report upon all matters of interest in regard to schools in his county, according to the form that may be prescribed by the territorial auditor; and he shall cause to be distributed all such circulars, blanks and other papers, including school laws and documents, in the several precincts in the county, as said auditor shall lawfully require. In case the county clerk shall fail, from any cause, to make

County apportionment

School taxes levied for past and current years.

License fees

Fines imposed.

Other school moneys.

Distribution of books, etc

return of the abstract as aforesaid, it shall be the duty of the county commissioners to deduct for every such failure, from the annual salary or allowance made to the county clerk for his services, fifty dollars.

Penalty for failure to make report

SEC. 36. The county commissioners of each county in this territory, shall make the same allowance to the county clerks, out of their respective county treasuries, for services performed and expenses incurred under this chapter, as is allowed for other services of like nature.

Compensation of county clerk.

SEC. 37. The precinct clerks and county clerks shall be responsible for all losses sustained by any precinct or county by reason of any failure on their respective parts, to make and return the enumeration and abstracts thereof as herein provided, and shall be liable for the same in a civil action, at the suit of the territory of Nebraska, and the amount so recovered shall be apportioned in the same manner as the school funds would have been to the respective counties or precincts, as the case may be.

Liabilities of county and precinct clerks.

Amount recovered, how appropriated.

SCHOOL HOUSE EXEMPT FROM SALE ON EXECUTION.

SEC. 38. Every lot or parcel of land which heretofore has been, or hereafter shall be, appropriated for the use of common schools in this territory, on which there has been or shall be a school house erected, and which has been or shall be occupied for the purpose of accommodating a common school of whatever grade, in the usual manner, from time to time, howsoever or by whomsoever the legal title to the same may be held and vested, shall be and the same is hereby exempted from sale on any execution, or other writ or order in the nature of an execution.

School property exempt from execution

APPOINTMENT OF SCHOOL EXAMINER.

SEC. 39. It shall be the duty of the county commissioners in the several counties of this territory, to appoint a competent person resident in the county, school examiner, who shall hold his office for the term of two years, and until his successor is appointed, and in case a vacancy occurs in the office of such school examiner by a refusal to serve, or otherwise, it shall be filled by like appointment by such board of county commissioners.

County commissioners to appoint school examiner.

School examiner to furnish teacher a certificate.

SEC. 40. It shall be the duty of such school examiner to furnish each person examined by him and found qualified, with a certificate of good moral character, and that she or he is qualified to teach orthography, reading, writing, arithmetic, geography, and English grammar, and in case such person intends to teach in any common school of higher grade, he or she shall first obtain a certificate of the requisite qualifications in addition to the branches aforesaid: *Provided*, That each person so applying for a certificate shall pay to the examiner a fee of one dollar, which fee shall be his compensation for making such examination, and no certificate of qualification shall be valid in any county, except that in which the examination took place, nor for a longer period than two years; and if at any time the recipient of the certificate shall be found incompetent or negligent, the examiner may revoke the same, and require such teacher to be dismissed; but such teacher shall be entitled to receive payment for services only up to the time of such dismissal.

Fee for examination of teachers.

Certificate to run two years.

Certificate may be revoked.

To keep record.

SEC. 41. The said examiner shall keep a record of his proceedings, noting the number and date of each certificate given, to whom, and for what term of time, and for what branches of study. It shall be the duty of the examiner to visit each school district in his county at least once in each year, counseling with school officers, visiting schools, and doing all that he can to best advance the interests of schools in his county, and to make an annual report, on or before the fifth day of November in each year, to the territorial auditor; and said examiner shall be entitled to receive the sum of two dollars for each day necessarily engaged in official service as herein provided, to be paid out of the county treasury on the order of the county clerk, and the county clerk may require the accounts when presented to be substantiated by oath, which oath said clerk may administer and file in his office.

To visit schools, etc.

Compensation.

TERRITORIAL AUDITOR.

Office to be furnished by territory.

SEC. 42. The books and papers of the territorial auditor relating to the school department shall be kept at the seat of government, where a suitable office shall be furnished by the territory, at which he shall give attendance, when not absent on public business.

Auditor shall purchase libraries and apparatus.

SEC. 43. As soon as the revenue, to be raised as hereinafter provided, for the purpose of furnishing the common schools with libraries and apparatus, will admit, it shall be the duty of the said auditor to purchase the same, and the books and apparatus so purchased shall be distributed, through the clerk's office of each county, to the board of education in each precinct, city or incorporated village, according to the enumeration of scholars.

How and to whom distributed.

To exercise supervision over school funds.

SEC. 44. He shall also exercise such supervision over the educational funds of the territory as may be necessary to secure their safety and right application and distribution according to law. He shall have power to require of county clerks, precinct boards of education, or other local school officers, clerks, and treasurers of precincts, county treasurers and clerks, recorders and treasurers of cities and villages, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools, and the management thereof, as he may deem important.

Shall have power to require reports.

To prescribe forms, etc.

SEC. 45. He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under this chapter, and shall cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith.

To make annual report to the legislature.

SEC. 46. It shall be the duty of said auditor to make an annual report in each and every year, to the legislative assembly, who shall cause the same to be published.

What report shall contain.

SEC. 47. The territorial auditor, in the annual report of his labor and observations, shall present a statement of the condition and amount of all funds and property appropriated to the purpose of education; a statement of the number of private or select schools in the territory, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of common schools in the territory, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, and the number of teachers attending them; a statement of the estimate and accounts of the expenditures of the public school fund of every description; a statement of plans for the management and improvement of common schools; and such other information relative to the educational interests of the territory as he may think of importance.

TERRITORIAL SCHOOL FUND.

Territorial school fund.

SEC. 48. For the purpose of affording the advantage of a free education to all the white youth of this territory, the territorial common school fund shall hereafter consist of such sum as will be produced by the annual levy and assessment of two mills upon the dollar valuation on the grand list of the taxable property of the territory, and there is hereby levied and assessed, annually, in addition to the revenues required for general purposes, the said two mills upon the dollar valuation as aforesaid, and the amount so levied and assessed shall be collected in the same manner as other territorial taxes, and when collected, shall be semi-annually distributed to the several organized counties of the territory, in proportion to the enumeration of scholars, and be applied exclusively to the support of common schools: *Provided*, That all colored persons shall be exempted from taxation for school purposes.

Rate of tax.

How collected.

How distributed.

Other school funds, fines, forfeitures, escheated lands.

SEC. 49. All fines assessed for a breach of the penal laws of the territory and all forfeitures which may accrue, all lands and other estates which shall escheat to the territory for the want of heirs or kindred entitled to the inheritance, all lands which have been or may hereafter be granted to the territory when no special purpose is expressed in the grant, and all unclaimed fees as provided by law, shall be denominated school funds, the income of which together with the taxes mentioned and specified in this chapter, shall be applied to the support of common schools in the several counties where collected; and it shall be the duty of all clerks of the district courts, at the close of every term thereof, to report to the county treasurer and county clerk of the county in which the court shall be held,

Lands granted to territory.

Unclaimed fees.

To belong to county in which collected.

Clerks of district courts and justices of the peace a statement of the amount of all fines imposed during said term of court, which are by law appropriated to the support of schools; and it shall be the duty of all justices of the peace, or other magistrates, to report immediately to the county clerk and county treasurer, upon imposing fines which are by law appropriated for school purposes, the amount of said fines, and the names of the person or persons against whom the fines were assessed; and the clerks of the district courts and justices of the peace shall immediately upon the collection of any such fines, pay or cause them to be paid into the treasury of the county in which the same were imposed.

to report fines.

Fines to be paid into county treasury.

MISCELLANEOUS PROVISIONS.

SEC. 50. The debts which have been heretofore contracted by any school district for school purposes, shall be provided for by the estimates of the proper school boards created under the provisions of this chapter.

Debts how provided for.

SEC. 51. The process, in all suits against any precinct board of education or other local officer, having charge of any of the public schools under the provisions of this chapter, shall be by summons, and shall be executed by leaving a copy thereof with the clerk or secretary of such board or other school officer, at least ten days before the return day thereof. And any suit, either in favor of or against any such board or other school officer, shall be prosecuted or defended, as the case may be, by the prosecuting attorney of the proper county, as a part of his official duties.

Service of process in suits at law.

District attorney shall prosecute or defend.

SEC. 52. The local board of education, or other local officers having charge of schools in any city, precinct or village, in which common schools have been organized under any special act, shall be and are hereby authorized, whenever they may deem it expedient, to call a meeting of the qualified voters of any such city, precinct or village, on giving thirty days public notice thereof, to determine by vote whether the common schools of such city, precinct or village shall be conducted and managed in accordance with the provisions of this chapter; and if a majority of the voters are found to be in favor of the change, then said local board or other school officers shall thereafter proceed

Board of education may call meetings to determine whether schools shall be managed according to this chapter.

in accordance with the provisions of this chapter, until their successors shall be elected and qualified, and such city or village may provide by ordinance for the election or appointment of a board of education, prescribing their number and term of office; and such board when so elected or appointed and qualified, shall, together with the clerk or recorder of such city or village, possess the same powers and discharge the same duties within the limits of their jurisdiction, as local directors and boards of education in precincts.

Board of education shall be trustee of grant, gift or bequest to precinct for school purposes.

SEC. 53. The respective precinct boards of education, and their successors in office, shall have power to take and hold in trust for the use and benefit of any central or high school, or subdistrict school in the precinct, any grant or devise of land and any donation or bequest of money or other personal property, to be applied by the board to the maintenance and support of any such school or schools according to the intention of the grant or donation.

When no subdistrict exists, board of education to be elected.

Their powers and duties.

May organize sub-districts.

SEC. 54. When no subdistrict exists, the qualified voters of the election precinct shall elect a board of education, consisting of three citizens, on the same day and in the same manner as provided in section two of this chapter for the election of school directors of subdistricts, and said board shall have all the powers and perform all the duties both of the board of education and the board of directors, until three subdistricts are organized; and the said board of education shall, whenever they may deem it necessary, establish subdistricts, which shall be organized according to the provisions of this chapter.

EDUCATION OF THE DEAF AND DUMB AND THE BLIND.*

Governor required to make arrangements with Iowa for admission of mutes and blind children.

SEC. 55. The governor of the territory of Nebraska is hereby authorized and required to make an arrangement and enter into a contract with the proper authorities of the state of Iowa, or any other state, if practicable, for the admission of all deaf mutes and blind children in the territory of Nebraska, between the ages of twelve and twenty years, to the asylums or schools of such state or states, erected and established for the education of these classes, upon such terms as may seem to him just.

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* Act approved February 12, 1866.

Certificate of county commissioners to accompany application to governor. What to contain.

SEC. 56. Any application to the governor for the relief of any such child, shall be accompanied by a certificate, signed by the county commissioners of the county wherein such child may reside, certifying that such child is an actual resident of said county, and that said child is entitled to the benefits of the provisions of this subdivision, and that the parents or guardian of such child are unable to defray the expenses incident to the education of such child, which certificate shall be filed in the office of the territorial auditor.

Duty of governor to provide transportation, clothing, etc

SEC. 57. Upon receiving a certificate of the county commissioners of any county, that a child is entitled to relief under the provisions of this subdivision, it shall be the duty of the governor to provide transportation for such child to some asylum or school for the education of such child, as provided in this subdivision, and to see that such child is provided with clothing and such other articles as may be necessary, or required by the rules and regulations of the asylum or school to which such child may be sent.

Expenses to be paid out of territorial treasury.

SEC. 58. All expenses incurred under the provisions of this subdivision shall be paid out of the territorial treasury, on the warrant of the territorial auditor: *Provided*, That before any claim for such expenses shall be allowed by the auditor, such account or claim shall be approved and certified as correct and just by the governor.

Governor to report to legislature.

SEC. 59. It shall be the duty of the governor to submit a report to each regular session of the legislature, of the number of such children, of each kind separately, who have received relief under the provisions of this subdivision, and also to what asylums or schools they have been sent.

Auditor to report to legislature.

SEC. 60. It shall be the duty of the territorial auditor to furnish a report at each regular session of the legislature, within ten days from the commencement thereof, of the expenses incurred under the provisions of this subdivision.

CHAPTER XLIX.

SEALS.

The use of private seals abolished.

SECTION 1. The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its equity or legality in any respect.

Instruments heretofore made without seal valid.

SEC. 2. All deeds, mortgages, or other instruments in writing, for the conveyance or encumbrance of real estate, or any interest therein, which have heretofore been made and executed, without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid in all courts of law and equity in this territory and elsewhere.

CHAPTER L.

SHERIFFS AND CONSTABLES.

Duty of sheriff and deputies.

SECTION 1. It is the duty of the sheriff to serve, or otherwise execute according to law, and return, writs or other legal process issued by lawful authority, and to him directed or committed, and to perform such other duties as may be required of him by law.

Contempt, how punished.

SEC. 2. His disobedience of the command of any such process is a contempt of the court from which it is issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

Custody of jail.

SEC. 3. He shall have charge and custody of the jail, and the prisoners in the same, and is required to receive those lawfully committed, and to keep them himself or by his deputy jailor until discharged by law.

Sheriff and deputies

SEC. 4. The sheriff and his deputies are conservators of the peace, and, to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law, may call any person to their aid; and, when necessary, the sheriff may summon the power of the county.

to be conservators of the peace.

SEC. 5. The sheriff shall attend upon the district court at its sessions in his county, and he is allowed the assistance of two constables, and of such further number as the court may direct, and shall attend the sessions of the judge of probate of the county when required by him.

To attend district and probate courts

SEC. 6. No sheriff, or his deputy or constable, shall appear in any court as attorney or counselor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

Not to appear as attorney.

SEC. 7. No sheriff, or his deputy or constable, shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law or equity; and every such purchase is absolutely void.

Purchase of property at public sale forbidden.

SEC. 8. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office; and in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under obligation to execute legal process then in his or their hands, and he and they will remain liable under the provisions of law as in other cases.

Vacancy.

SEC. 9. When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached or levied upon, (except as provided in the preceding section,) and all prisoners in jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

Books and papers.

CHAPTER LI.

SURVEYOR.

Shall make all surveys in his county.

SECTION 1. It shall be the duty of the county surveyor to make all surveys, within his county, that he may be called upon to make.

Commissioners to procure book for surveyor, in which all surveys shall be recorded.

SEC. 2. The county commissioners of each county shall procure a suitable book, for the use of, and which shall be kept by, the county surveyor, and in which it shall be the duty of the county survevor to truly record all surveys made by him, within twenty days after such surveys shall be made, and he shall, at the expiration of his term of office, deliver his said book to his successor in office, or to the county clerk of the proper county.

What the record shall show.

SEC. 3. The record shall show the metes and bounds of all surveys made by the surveyor, in his county, at whose request, and for whom the same were made, together with the names and oath of the chainmen employed, and shall be signed by the surveyor.

Chainman to be sworn.

SEC. 4. All necessary chainmen shall be employed by the person or persons causing the survey to be made. The chainmen shall be disinterested persons, and approved of and sworn by the surveyor, to measure justly and exactly, to the best of their knowledge and ability, all lines measured by them.

Surveyor to establish monuments, etc.

SEC. 5. It shall be the duty of the county surveyor to establish suitable and proper bounds and monuments at each corner or angle, in all surveys made by him, and when growing trees are convenient to such corner or angle, he shall mark two or more, with a blaze and notch facing the corner or angle, as witness trees to the same, and shall note the courses and distances of such witness trees from the corner, together with a description of the size and kind of tree.

CHAPTER LII.

TEN HOUR SYSTEM.

SECTION 1. Ten hours shall constitute one day's labor, so far as it concerns laborers and mechanics, throughout the territory. Ten hours a day's labor.

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CHAPTER LIII.

TOWNS.

INCORPORATION OF TOWNS.

SECTION 1. If a majority of the taxable inhabitants of any town within this territory, shall present a petition to the commissioners of the same county in which said town is situated, praying that they may be incorporated, and a police established for their local government, designating the name they wish to assume, and if such commissioners shall be satisfied that a majority of the taxable inhabitants of such town have signed the petition, they may declare the town incorporated, and thenceforth the inhabitants within such bounds shall be a body politic and corporate, by the name and style of the town of —— (naming it,) and they and their successors shall be known by that name in law, and have perpetual succession, sue and be sued, defend and be defended, in all courts of law and equity, and may grant, purchase, hold and receive property, both real and personal, within such town, and lease, sell and dispose of the same for the benefit of the town, and may have a common seal, and may alter the same at pleasure. Petition. Powers.

SEC. 2. The corporate powers of every town so incorporated, shall be vested in a board of trustees, to consist of Corporate powers.

five members, to be elected by the qualified voters residing within such town.

Trustees.

SEC. 3. The said commissioners, when they declare a town incorporated, shall appoint five suitable persons, eligible according to this subdivision, as trustees for such town, and they shall hold their offices until their successors are elected and qualified; and the election for trustees shall be held on the first Monday in May annually, and no person shall be eligible to the office of trustee who shall not have attained the age of twenty-one years, who shall not be an inhabitant of the town at the time of his election, and who shall not be a free, white male citizen of the United States: and they shall hold their office for one year, and until their successors are elected and qualified.

Eligibility.

Duties and powers of trustees.

SEC. 4. The board of trustees shall have power to pass by-laws and ordinances, to remove nuisances, to suppress bawdy, gambling, and all other disorderly houses, within the limits of such town; to license and regulate theatrical and other amusements within such town; to prohibit firing of firearms, or prevent furious riding and driving of horses, or other animals, within the town; to establish night-watches and patrols; to erect and repair bridges: to regulate the landing and stationing of steamboats, rafts, and other water craft; to prevent the introduction and spread of disease; to open public squares and avenues, drains and sewers, streets and alleys; to impose and appropriate fines and forfeitures for breaches of their ordinances; to levy and collect taxes; and to pass by-laws and ordinances for the regulation of the police of such town.

Power to appoint officers.

SEC. 5. The board of trustees shall have power to appoint a constable, collector and assessor, and other officers, and remove them from office, and fix the compensation for their services.

Oath.

SEC. 6. Every trustee shall, before he enters upon the duties of his office, take an oath before some judge or justice of the peace, that he will faithfully and impartially discharge the duties enjoined on him by law.

Chairman and clerk.

SEC. 7. Every board of trustees shall assemble within thirty days after their appointment or election, and one of their number shall be chosen chairman, and they shall also appoint some suitable person clerk. The board of trustees shall, by ordinance, fix the time and place of meeting.

Quorum.

SEC. 8. The chairman may at any time, if necessary, call a meeting of the board, by order to the clerk, who shall notify the remaining members of the board, and a majority of the trustees shall constitute a quorum to do business. A smaller number may adjourn from time to time, and may compel the attendance of absent members, by ordering a notice to be served upon them by the clerk: and if absent members fail to attend after being duly notified by the clerk, at the time and place appointed by those adjourning, they shall be deemed to have vacated their office, and upon proof of such notice and failure to the county commissioners, they shall fill such vacancy or vacancies, and those appointed to fill vacancies shall hold their offices till the next regular election, and until their successors are elected and qualified.

Failure to attend.

Judges of election.

SEC. 9. The county commissioners shall appoint three suitable persons as judges of the election of trustees of any incorporated town, qualified to act as judges of other elections held under the laws of this territory, and they shall appoint clerks, and both judges and clerks shall take the like oath as judges and clerks of other elections, and proceed in every respect as in such cases.

Oath.

When voters to appoint.

SEC. 10. If the county commissioners fail to appoint judges of such elections, the voters, when assembled, shall appoint judges, who shall appoint clerks, and proceed in all things as the judges appointed by the commissioners.

Collector.

SEC. 11. The collector may collect all taxes levied by the board of trustees, in the same manner that collectors of the revenue of this territory are authorized to collect the territorial revenue.

Fines, etc., how recovered.

SEC. 12. All fines, penalties and forfeitures accruing to any town, may be recovered by action of debt, in the name of the corporation, before any justice of the peace.

Prosecution.

SEC. 13. Such action may be commenced and prosecuted by the attorney for the corporation, which the board of trustees shall have power to appoint, or by order of the board. Any inhabitant of such town may be a juror or witness, if otherwise competent and qualified.

By-laws to be published.

SEC. 14. The chairman of the board of trustees shall cause all the by-laws and ordinances of the board to be printed and published for the information of the inhabitants, and cause the same to be carried into effect.

Vacancies, how filled.

SEC. 15. Vacancies occasioned by death, resignation or removal from the town, shall be filled by the county commissioners, and the chairman of the board is required to notify such commissioners of such vacancies.

Chairman *pro tem.*

SEC. 16. If the chairman of the board be absent at any meeting of the board, a chairman *pro tempore* may be appointed by the board, who shall in all things perform the duties of the regular chairman, and be subject to the like penalties for failing to perform such duties.

Voters.

SEC. 17. No person shall vote at the election of trustees of an incorporated town but free white male citizens of the United States, over twenty-one years of age, residing within the limits of the town incorporated, and who have been three months a resident of such town at the time of the election.

Elections.

SEC. 18. All elections of trustees shall be opened at ten o'clock in the forenoon, and be kept open until six o'clock in the evening; and the votes shall be given by ballot. After the close of the election, the judge shall make out an abstract of the votes cast, and return the same, together with one of the poll-books of the election, by one of the clerks, to the county clerk. Such abstract must be certified under the hands of the judges and attested by the clerk.

Canvassing returns.

SEC. 19. The county clerk shall take to his assistance, within ten days after the returns are made to him, two justices of the peace of the county, and examine such returns, and give to the persons having the highest number of votes certificates of election.

In case of a tie.

SEC. 20. In case of a tie, the county clerk shall order another election, stating the time, and order the clerk to give notice of such election; and the voters, when assembled, shall appoint judges, and the judges shall appoint clerks, and proceed with the election in all respects as in other cases.

SEC. 21. If the regular election of trustees be not held, the board of trustees and other officers shall continue to perform the duties of their office, and the county clerk shall fix a time for an election, and order the clerk of the board to give notice thereof. Term of office.

SEC. 22. A majority of the taxable inhabitants of any incorporated town may petition the county commissioners for a dissolution of their corporation, and the same shall be dissolved, if the commissioners be satisfied that a majority of such inhabitants have so petitioned. Petition for dissolution.

SEC. 23. The county commissioners, upon the dissolution of any corporation, shall appoint some suitable person trustee for such corporation. Trustee.

SEC. 24. The trustee shall forthwith take charge of all the property, papers and effects of the corporation, and collect the debts due the corporation, and sell the property belonging to the same, under the direction of such commissioners. Duties of trustee.

SEC. 25. The trustee shall, before he enters upon the discharge of his duties, take an oath and give bond for the faithful performance of his duties; the bond shall be given to the county for the use of the inhabitants of the incorporated town. Bond and oath.

SEC. 26. When any town is indebted to any person, the board of trustees shall audit and settle the same, and draw a warrant upon the treasurer of the corporation, which shall be signed by the chairman and attested by the clerk. Debts, how paid.

SEC. 27. All warrants drawn on the treasurer shall be assignable. Warrants assignable

SEC. 28. No treasurer shall pay any warrant drawn on the treasury of any corporation to any other person than the person in whose favor the same is drawn, or his executor or administrator, or to the person to whom the same shall be assigned, or to his executor or administrator. To whom payable.

SEC. 29. If any treasurer violate the provisions of the preceding section, he shall be fined not less than fifty dollars nor more than two hundred dollars, for every such offense. Penalty.

TOWN SITES.

Town site, by whom entered.

SEC. 30. When any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to private entry under the existing pre-emption laws, it shall be lawful and the duty, whenever required by the occupants and owners by deed of the lots within the limits of the town, as provided in section thirty-one of this chapter, for the corporate authorities of the town, if incorporated, and if not incorporated then for the probate judge of the county wherein the town is situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof, and those holding by deed or otherwise, according to their respective interests.

Corporate authorities or probate judge to make entry when petitioned.

SEC. 31. Whenever a petition signed by a majority of the occupants residing upon a town site, is presented to the corporate authorities of a town, if incorporated, or the probate judge of the county in which the town is situated if the town is not incorporated, praying that the land settled upon and occupied as the town site be entered at the proper land office, it shall be the duty of the corporate authorities, or the probate judge, as the case may be, without delay, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust as hereinbefore provided.

Money may be raised by assessment.

SEC. 32. If at the time the petition is presented as provided for in preceding section, there is not, in the treasury of the town, moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the probate judge, as the case may be, may levy and assess an equal proportional tax on the land so occupied, sufficient to pay for the said land and all costs of entering the same.

Notice of entry to be given.

SEC. 33. After the entry of the land settled upon and occupied as a town site, as hereinbefore prescribed the corporate authorities or the probate judge, as the case may be, having entered the land, shall cause public notice to be given of the fact of such entry, by posting written or printed notice in at least three public places in the town, and no deeds for the land or any part thereof, shall be executed and delivered within the period of thirty days after the first day of the publication of such notice.

Deed to be given to party entitled.

SEC. 34. After the lapse of thirty days from the first day of the publication of such notice, the mayor of the town, or if there is no mayor, the chairman of the board of trustees if such town is incorporated, and if the town is not incorporated, then the probate judge of the county wherein the town is situated, shall on demand execute and deliver to each person who may be legally entitled to the same, a deed in fee simple, for the part or parts, lot or lots of such land as the person demanding may be lawfully entitled to, on the payment by such person of his proportion of the purchase money of the land, together with his proportion of such sum as may be necessary to pay for streets, alleys, squares and public grounds, and all costs and expenses necessarily incurred in the entry of the land.

Adverse claimants, proceedings by.

SEC. 35. When two or more persons claim title adversely to the same lot, lots or lands, within the boundaries of any town entered according to the provisions of this chapter, the party first claiming a deed shall serve a written notice upon the adverse party, stating therein that he claims title to the certain property, describing the same, and that he will, on the certain day specified in the notice, appear before the mayor, chairman of the board of trustees, or probate judge of the county wherein the town is situated, as the case may be, to prove his right to claim and receive the title deed to the lot, lots or lands described in the notice; and if the adverse party is not a resident of the county wherein the town is situated, and cannot be found therein, the first claimant shall publish the notice in a newspaper, printed and published in the county, or if there is no such newspaper, then in a newspaper published in the territory of general circulation in that county, at least three weeks consecutively before the day specified for the appearance.

How determined.

SEC. 36. The mayor, chairman of the board of trustees, or probate judge, before whom any person is notified to appear, shall, on the day specified in the notice, or on a convenient day within the period of thirty days after the day specified in the notice, hear the evidence of the adverse parties and determine all questions of title according to law and the evidence.

Appeal to district court.

SEC. 37. Any person aggrieved by the determination of the mayor, chairman of the board of trustees, or probate judge, shall, within five days after such decision, serve written notice on the mayor, chairman of the board of trustees, or probate judge, and shall, within the period of forty days after the day on which the decision was rendered, file his petition in the district court of the territory in the county wherein the town is situated, setting forth his claim and title to the disputed property, and against the making of the deed or title by the mayor, chairman of the board of trustees, or probate judge, to the adverse claimant or claimants, stating therein the facts constituting his cause of complaint, and praying that the trust may be truly directed and enforced, and that the petitioner may have other relief.

When judge, etc., may execute deed.

SEC. 38. The mayor, chairman of the board of trustees, or probate judge, shall not execute or deliver a deed or deeds to either of the adverse claimants, until after the expiration of five days after the day of the determination as aforesaid; and if notice is served as provided in the next preceding section, the mayor, chairman of the board of trustees, or probate judge, upon whom notice is served, shall not execute or deliver to either of the adverse claimants, a deed or deeds until after the expiration of forty days after the day of the decision as aforesaid; and if within the period of forty days after the day of the decision, the party who is aggrieved shall file his petition as provided in the preceding section, then the mayor, chairman of the board of trustees, or probate judge, shall transmit all the papers and evidence in his possession, together with a transcript of his proceedings, to the court wherein the petition is filed.

After five days, party shall be entitled to deed.

SEC. 39. If notice is not served on the mayor, chairman of the board of trustees, or probate judge, as hereinbefore provided, within five days after the day of the decision, the mayor, chairman of the board of trustees, or probate judge, shall, on demand in writing by the party adjudged to be entitled thereto, execute and deliver to such party a deed in fee simple for the part or parts, lot or lots of such land, as the person demanding may be lawfully entitled to, as provided in section thirty-four of this chapter.

Fee for deed

SEC. 40. The mayor, chairman of the board of trustees, or probate judge, shall receive for a deed for one lot, one dollar, and no more, and for each additional lot included in a deed, ten cents, and no more, and shall include all the lots or parts to which each person is entitled in the same deed, unless otherwise requested by the party entitled thereto; and the party receiving the deed shall pay the above fee, together with the lawful fee to the officer acknowledging the same.

Judge, etc., may administer oath and compel attendance of witnesses

SEC. 41. The mayor, chairman of the board of trustees, and probate judge, shall have power to administer oaths and affirmations in all trials under the provisions of this chapter, and shall have the same power to compel the attendance and examine witnesses as justices of the peace.

TOWN PLAT.

Map to be made and recorded.

SEC. 42. The proprietor of any land may lay out a town, or addition to any town, and he shall cause an accurate map or plat to be made out, particularly describing the lots, streets, avenues, lanes, alleys or other grounds belonging to such town or addition. The lots must be designated by their numbers, and the streets, alleys, avenues, lanes and other grounds, must be designated by names or numbers, and such plat shall be acknowledged before some court or officer authorized to take the acknowledgment of deeds or conveyances of real estate, and when such map or plat is made out and acknowledged, the same shall be filed and recorded in the office of the county clerk of the county.

Equivalent to deed in fee simple.

SEC. 43. Such plat and acknowledgment being so recorded, shall be equivalent to a deed in fee simple from the proprietor, of all streets, alleys, avenues, squares, parks and commons, and such portion of the land as is therein set apart for public, county, village, town or city use, or is dedicated to charitable, religious, or educational purposes.

In case of division of county.

SEC. 44. If any town plat, or addition to any town plat, be filed in the office of the clerk of any county, and the lines thereof be changed, by reason of the establishment of a new county, and such town or addition fall within the limits of such new county, the clerk of the old county shall forthwith transmit such map or plat to the clerk of the new county for record, and it shall be there recorded.

May be vacated. SEC. 45. Any town plat, or addition to any town plat, may be wholly or in part vacated, whenever the consent of all the property holders of such town, or of an addition to any town, can be obtained, and for that purpose a petition may be presented to the county commissioners, asking a vacation of the whole or the part desired to be vacated, signed by all the property holders.

Non-residents. SEC. 46. If any property holder in such town or village be a non-resident, or be unknown, a notice of the petition having been presented to such commissioners, shall be published for six weeks, the last insertion to be at least four weeks before the order of vacation is to be made. Any property holder can then appear at the time designated in the notice, and make his objections to the vacation, and in such case no vacation shall be made.

Vacation, how ordered SEC. 47. If no objection be made, the order for vacation shall be made, and all the right and title to all streets, lanes, alleys, avenues, squares, commons or other grounds, dedicated to public use, shall revert to the original proprietor or proprietors, their heirs or assigns, and the commissioners shall issue a proclamation to that effect.

Damages, how taken. SEC. 48. In all cases of vacation, any person who has not had personal notice of the application therefor, may apply to the commissioners and demand an assessment of all damages that he may have sustained by reason of such vacation, and an appeal shall lie from the judgment of the commissioners to the district court of the county.

Town plat to be surveyed. SEC. 49. Every town plat when presented for record, shall have appended to it a regular survey thereof made by some competent surveyor, beginning at some permanent, visible, natural or artificial monument, with at least one bearing post, stone, tree, or object, and the surveyor shall certify that he has accurately surveyed such town, and that the streets, alleys, lanes, avenues, squares, parks, commons, and such places or lots set apart for public, village, town, city or county use, or dedicated to charitable, religious or educational purposes, are well and accurately staked off and marked. And if any proprietor or proprietors of such town or addition, shall sell or offer to sell any lots or subdivisions of such town or parts thereof, without complying with the requirements of this chapter, he or they shall forfeit one hundred dollars for each lot, subdivision or part thereof, so sold or offered for sale, to be recovered by any person who will sue for the same.

Provisions general.

SEC. 50. The provisions of this chapter shall apply to all town sites that have heretofore, or hereafter may be laid out on the public lands.

CHAPTER LIV.

WAREHOUSEMEN.

Consignee of personal property shall enter description, etc., in a book kept for that purpose.

SECTION 1. Whenever any personal property shall be consigned to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof.

When consignee to notify owner.

SEC. 2. If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or otherwise disposed of, according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner, by letter to be directed to him and deposited in a post-office to be transmitted by mail, of the reception of such property.

Notice of possession,

SEC. 3. In case any such property shall remain unsale, etc., of unclaimed property. claimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks, in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided.

Proceedings in case of unclaimed property. SEC. 4. In case the owner or person entitled to such property shall not, within three months after the publication of such notice, claim such property and pay the lawful charges thereon, including the expense of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of this notice, and whether the owner of such property is known or unknown.

Property to be opened and examined by justice. SEC. 5. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand that the property therein described be sold by the sheriff of the county where the same shall be, at public auction, upon due notice.

Notice of sale by sheriff. SEC. 6. It shall be the duty of the sheriff receiving such inventory and order, to give ten days notice of the sale by posting up written notices thereof in three public places in the county or city, and to sell such property at public auction for the highest price he can obtain therefor.

Duty of sheriff to make return SEC. 7. Upon completing the sale, the sheriff making the same shall endorse upon the order aforesaid a return of his proceedings upon such order, and the proceeds of the sale after deducting his fees, which shall be the same as upon an execution.

Justice to pay charges from proceeds of sale SEC. 8. From the proceeds of such sale the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant if there be not sufficient to pay the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to three dollars for each day's services rendered by him in such proceedings.

Justice to deliver affidavit, etc., to treasurer of county, and pay over balance of proceeds.

SEC. 9. Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory, and order of sale and return hereinbefore mentioned, together with a statement of the charges and expenses incurred in respect to such property as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale remaining after payment of such charges, expenses and fees.

Duty of treasurer.

SEC. 10. The treasurer shall file in his office and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale in the books of his office.

When owner entitled to receive money.

SEC. 11. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall be deposited in the county treasury, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

If money is not paid to owner, to be paid into school fund.

SEC. 12. If the amount so deposited with any county treasurer shall not be paid to such owner or his legal representatives within the said five years, such county treasurer shall pay such amount into the school fund of the proper county, to be appropriated for the support of schools.

CHAPTER LV.

WEIGHTS AND MEASURES.

Standard to be same as that estab-

SECTION 1. The standard of weights and linear measures shall be the same as that established by act of Conlished by act of Congress, except as to ton.

gress for the several states, except that the ton shall consist of two thousand pounds.

The bushel.

SEC. 2. A bushel shall consist of two thousand one hundred and fifty cubic inches. The half bushel, peck, and half peck, shall consist of the proper division and subdivision of a bushel.

The gallon.

SEC. 3. A gallon shall consist of two hundred and thirty-one cubic inches.

The pound.

SEC. 4. A pound avoirdupois shall consist of seven thousand grains in Troy weight.

Number of pounds to the bushel of articles enumerated

SEC. 5. A bushel of each of the articles enumerated in this section, shall consist of the number of pounds respectively affixed to each, viz.:

Apples, dried, per bushel,	24	pounds.
Barley,	48	"
Beans, castor,	46	"
Beans, white,	60	"
Bran,	20	"
Buckwheat,	52	"
Coal, stone,	80	"
Corn, ear,	70	"
Corn, shelled,	56	"
Corn meal,	50	"
Hair for plastering,	8	"
Hay, per ton,	2,000	"
Honey, strained, per gallon,	12	"
Lime, unslacked, per bushel,	80	"
Malt, barley,	30	"
Oats,	34	"
Onions,	57	"
Onion sets,	25	"
Peaches, dried,	33	"
Potatoes, Irish,	60	"
Potatoes, sweet,	50	"
Peas,	60	"
Rye,	56	"
Seeds, Blue Grass,	14	"
Clover,	60	"
Flax,	56	"
Hemp,	44	"
Hungarian Grass,	60	"
Millet,	85	"
Osage Orange,	82	"
Sorghum,	30	"
Timothy Grass,	45	"

Salt,	50	pounds.
Turnips,	55	"
Wheat,	60	"

Penalty for keeping false weights or measures.

SEC. 6. Any person who shall knowingly keep false weights or measures, and shall buy and sell articles thereby, shall forfeit and pay, upon conviction, a fine of not less than five nor more than twenty-five dollars, to be recovered before any court having competent jurisdiction; the fine shall be appropriated to the use of common schools in the same county; he shall also be liable to the injured party in double the amount of damages, with costs of suit.

PART II.

CODE OF CIVIL PROCEDURE.

PRELIMINARY PROVISIONS.

Rule of common law not applicable to this code.

SECTION 1. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object, and assist the parties in obtaining justice.

TITLE I.

FORM OF CIVIL ACTIONS.

Distinction between actions at law abolished. One form of action.

SEC. 2. The distinction between actions at law, and the forms of all such actions and suits, heretofore existing, is abolished; and there shall be, hereafter, but one form of action, which shall be called a civil action.

Parties, how designated.

SEC. 3. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Feigned issues abolished.

SEC. 4. There can be no feigned issues; but a question of fact, not put in issue by the pleadings, may be tried by a jury, upon an order for the trial, stating, distinctly and plainly, the question of fact to be tried, and such order is the only authority necessary for a trial.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

When civil action may be commenced.

SEC. 5. Civil actions can only be commenced within the time prescribed in this title, after the cause of action shall have accrued.

Action as to possession of title to lands, etc.

SEC. 6. An action for the recovery of the title or possession of lands, tenements or hereditaments, can only be brought within twenty-one years after the cause of such action shall have accrued.

In case of certain disabilities.

SEC. 7. If a person entitled to commence any action for the recovery of the title or possession of any lands, tenements or hereditaments, be, at the time his or her right or title shall first descend or accrue, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person may, after the expiration of twenty-one years from the time his or her right or title first descended or accrued, bring such action within ten years after such disability is removed, and at no time thereafter.

As to forcible entry and detainer.

SEC. 8. An action for the forcible entry and detainer, or forcible detainer only, of real property, can only be brought within one year after the cause of such action shall have accrued.

Of civil actions other than for real estate.

SEC. 9. Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued:

Actions upon agreement, etc., in writing.

SEC. 10. Within five years, an action upon a specialty, or any agreement, contract or promise in writing, or foreign judgment.

On contract not in writing.

SEC. 11. Within four years, an action upon a contract, not in writing, expressed or implied; an action upon a liability created by statute, other than a forfeiture or penalty.

Actions for trespass on real property, etc.

SEC. 12. Within four years, an action for trespass upon real property; an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud, but the cause of action in such case shall not deemed to have accrued until the discovery of the fraud.

Actions for libel, slander, etc.

SEC. 13. Within one year, an action for libel, slander, assault and battery, malicious prosecution or false imprisonment; an action upon a statute for a penalty or forfeiture, but where the statute giving such action prescribes a different limitation, the action may be brought within the period so limited.

On official bond, etc.

SEC. 14. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, or in any case whatever required by statute, can only be brought within ten years.

For damages, etc

SEC. 15. Actions brought for damages growing out of the failure, or want of consideration of contracts, express or implied, or for the recovery of money paid upon contracts, express or implied, the consideration of which has wholly or in part failed, shall be brought within four years.

For relief, etc.

SEC. 16. An action for relief not hereinbefore provided for, can only be brought within four years after the cause of action shall have accrued.

Disabilities.

SEC. 17. If a person entitled to bring any action mentioned in this title, except for a penalty or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this title after such disability shall be removed. The absence from the territory, death, or other disability of a non-resident, save the cases mentioned in this section, shall not operate to extend the period within which actions *in rem* shall be commenced by and against such non-resident, or his representatives.

Actions barred by laws of state, etc., barred by this title.

SEC. 18. All actions, or causes of action, which are or have been barred by the laws of this territory, or any state or territory of the United States, shall be deemed barred under the laws of this territory.

When actions shall be deemed commenced.

SEC. 19. An action shall be deemed commenced, within the meaning of this title, as to the defendant, at the date of the summons which is served on him; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication shall be regularly made.

If party absent, or abscond, period for commencement of action not to run.

SEC. 20. If, when a cause of action accrues against a person, he be out of the territory, or shall have absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he come into the territory, or while he is absconded or concealed; and if, after the cause of action accrues, he depart from the territory, or abscond or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

In case where cause of action

SEC. 21. When a cause of action has been fully barred by the laws of any state or country where the defendant has previously resided, such bar shall be the same defense in this territory as though it had arisen under the provisions of this title.

has been barred.

Where part of principal or interest has been paid.

SEC. 22. In any cause founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same, shall have been made in writing, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise.

Parties may be designated as in bills of exchange and promissory notes.

SEC. 23. In all actions upon bills of exchange or promissory notes, or other written instruments, whenever any of the parties thereto are designated by the initial letter or letters, or some contraction of the christian or first name or names, it shall be sufficient to designate such person by the name, initial letter or letters, or contraction of the first name or names, instead of stating the christian or first name or names in full.

An association may sue and be sued by the assumed or known company name.

Not necessary to prove the names of persons.

SEC. 24. Any company or association of persons formed for the purpose of carrying on any trade or business, or for the purpose of holding any species of property in this territory, and not incorporated, may sue and be sued by such usual name as such company, partnership or association may have assumed to itself or be known by, and it shall not be necessary in such case to set forth in the process or pleadings, or to prove at the trial, the names of the persons composing such company.

Process may be served at usual place of business on one of the members, etc.

SEC. 25. Process against any such company or firm shall be served by a copy left at their usual place of doing business within the county, with one of the members of such company or firm, or with a clerk or general agent thereof, and executions issued on any judgments rendered in such proceedings shall be levied only on partnership property.

Security for costs when company sues.

SEC. 26. In cases where a company shall sue in its partnership name, such company shall procure the writ to be endorsed by a responsible surety, resident of the county, for costs, or otherwise give security for costs.

When plaintiff may file bill in chancery against members of company.

SEC. 27. If the plaintiff, in any judgment so rendered against any company or partnership, shall seek to charge the individual property of the persons composing such company or firm, it shall be lawful for him to file a bill in chancery against the several members thereof, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons or any of them as may appear to have been members of such company, association or firm.

Laws now in force not repealed.

SEC. 28. The remedies hereby given shall not be construed as repealing any laws now in force in relation to writs by and against partners, but as an addition thereto.

TITLE III.

PARTIES TO CIVIL ACTIONS.

Actions to be in the name of real party in interest.

SEC. 29. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section thirty-two.

How assignee may maintain action.

SEC. 30. The assignee of a thing in action may maintain an action thereon in his own name and behalf, without the name of the assignor.

Assignment of a thing in action not to prejudice a defense.

SEC. 31. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense now allowed; but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith and upon good consideration, before due.

Executor or trustee may sue without beneficiary.

SEC. 32. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way.

Husband must join in action, except when she may sue without him.

SEC. 33. Where a married woman is a party, her husband must be joined with her; except when the action concerns her separate property, she may sue without her husband, by her next friend.

When wife shall prosecute and defend by her next friend.

SEC. 34. When the action is between herself and her husband, she may sue or be sued alone; but in every such action other than for a divorce or alimony, she shall prosecute and defend by her next friend.

Wife may defend.

SEC. 35. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also.

Infant must sue by his guardian or next friend.

SEC. 36. The action of an infant must be brought by his guardian or next friend. When the action is brought by his next friend, the court has power to dismiss it, if it is not for the benefit of the infant; or, to substitute the guardian of the infant, or any person, as the next friend.

SEC. 37. The guardian or the next friend is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either may be a witness in an action brought by him.

Guardian or next friend liable for costs, and may be a witness.

SEC. 38. The defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a probate judge. The appointment cannot be made until after service of the summons in the action, as directed by this code.

Infant to defend by guardian.

SEC. 39. The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

Guardian, upon whose application appointed.

SEC. 40. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

Who may be joined as plaintiffs.

SEC. 41. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Who may be made defendants.

SEC. 42. Of the parties to the action, those who are united in interest must be joined, as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason being stated in the petition.

Parties united in interest must be joined.

SEC. 43. When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When one may sue or defend for all.

SEC. 44. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

Persons severally liable may any or all be included in one action.

SEC. 45. An action does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, during its pendency, if the cause of action survive or continue. In the case of the marriage of a female party, the fact being suggested on the record, the husband may be made a party with his wife; and in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other

Actions not to abate by death, marriage or other disability.

Proceedings in such case

transfer of interest, the action may be continued in the name of the original party; or the court may allow the person to whom the transfer is made, to be substituted in the action.

If controversy cannot be decided without prejudice to others they must be brought in.

SEC. 46. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in.

In an action for property all interested may be made parties.

SEC. 47. When, in an action for the recovery of real or personal property, any person having an interest in the property applies to be made a party, the court may order it to be done.

Upon affidavit of defendant before answer, that another claims property, court may make order for its safe keeping, etc

SEC. 48. Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party, being served with a copy of the order by the sheriff or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof.

If third party fail to come in, he is barred.

He may be made defendant.

Last section to apply to sheriff, who shall have benefit of it.

SEC. 49. The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under execution, or for the proceeds of such property so taken and sold by him. And the defendant in such action shall be entitled to the benefit of those provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

In action against officer for

SEC. 50. In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.

property, plaintiff in execution may be substituted.

TITLE IV.

THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

Certain actions must be brought in the county where the property is situated.

SEC. 51. Actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-two:

First. For the recovery of real property, or of an estate or interest therein.

Second. For the partition of real property.

Third. For the sale of real property under a mortgage, lien, or other incumbrance or charge.

Where the property is situated in two or more counties, the action may be brought in either, except as to the action for the possession of real property.

SEC. 52. If the real property, the subject of the action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract or part thereof is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

For specific performance.

SEC. 53. An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

Certain actions must be brought in county where the cause arose.

SEC. 54. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

First. An action for the recovery of a fine, forfeiture or penalty, imposed by a statute; except that, when it is imposed for an offense committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water course or road, and opposite to the place where the offense was committed.

Second. An action against a public officer, for an act done by him in virtue or under color of his office, or for a neglect of his official duty.

Third. An action on the official bond or undertaking of a public officer.

Where actions may be brought against a corporation.

SEC. 55. An action other than one of those mentioned in the first three sections of this title, against a corporation created by the laws of this territory, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

Where actions against railroads, etc., may be brought.

SEC. 56. An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the said road or line passes.

Where, against a turnpike company.

SEC. 57. An action other than one of those mentioned in the first three sections of this title, against a turnpike road company, may be brought in any county in which any part of the road lies.

Exception, where the charter provides otherwise.

SEC. 58. The provisions of this title shall not apply in the case of any corporation created by a law of this territory, whose charter prescribes a place where alone a suit against such corporation may be brought.

Where an action against a non-resident may be brought.

SEC. 59. An action other than one of those mentioned in the first three sections of this title, against a non-resident of this territory or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

Every other action where defendant resides.

SEC. 60. Every other action must be brought in the county in which the defendant, or some one of the defendants, resides, or may be summoned.

When place of trial may be changed.

SEC. 61. In all cases in which it shall be made to appear by affidavit to the satisfaction of the court, that a fair and impartial trial cannot be had in the county where the suit is pending, the court may change the place of trial to some adjoining county wherein such impartial trial can be had; but if the objection shall be against all the counties of the district, then to the nearest county in the adjoining district.

TITLE V.

COMMENCEMENT OF A CIVIL ACTION.

CHAPTER I.

MANNER OF COMMENCING CIVIL ACTIONS.

Civil action commenced by petition and summons.

SEC. 62. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon.

Precipe for summons.

SEC. 63. The plaintiff shall also file, with the clerk of the court, a precipe, stating the names of the parties to the action, and demanding that a summons issue thereon.

Requisites of a summons.

SEC. 64. The summons shall be issued by the clerk, shall be under the seal of the court from which the same shall issue, and shall be signed by the clerk. Its style shall be "The Territory of Nebraska, —— County," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant or defendants named therein, that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name, at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly. And where the action is for the recovery of money only, there shall be endorsed on the writ the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

When summons may issue to another county.

SEC. 65. Where the action is rightly brought in any county, according to the provisions of title four, a summons shall be issued to any other county, against any one or more of the defendants, at the plaintiff's request.

When summons returnable.

SEC. 66. Whenever the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after the day of its date, but when issued to any other county than the one in which the action is brought, it may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date. It shall state the day of the month on which it is returnable.

When further writs may be issued.

SEC. 67. When a writ is returned "not summoned," other writs may be issued, until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

CHAPTER II.

SERVICE OF SUMMONS.

Actual Service.

By whom summons may be served. SEC. 68. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be indorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this territory, the return shall be verified by oath or affirmation.

Manner of service. SEC. 69. The service shall be by delivering a copy of the summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day.

Return, what to state. SEC. 70. In all cases the return must state the time and manner of service.

When to return the summons. SEC. 71. The officer to whom the summons is directed must return the same at the time therein stated.

What equivalent to a service. SEC. 72. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to a service.

How served on a corporation. SEC. 73. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or last usual place of business of such corporation.

May be served on an agent of an insurance company. SEC. 74. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

On the agent of a foreign corporation. SEC. 75. When the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent.

Infants, how served. SEC. 76. When the defendant is a minor under the age of fourteen years, the service must be upon him, and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

Constructive Service.

Service by publication.

SEC. 77. Service may be made by publication in either of the following cases:

First. In actions brought under the fifty-first, fifty-second and fifty-third sections of this code, where any or all of the defendants reside out of the territory.

Second. In actions brought to establish or set aside a will, where any or all the defendants reside out of the territory.

Third. In actions brought against a non-resident of this territory, or a foreign corporation, having in this territory property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way.

Fourth. In actions which relate to, or the subject of which is, real or personal property in this territory, where any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the territory, or a foreign corporation.

Fifth. In all actions where the defendant, being a resident of the territory, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

What affidavit necessary.

SEC. 78. Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this territory, on the defendant or defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication.

Publication, how made.

SEC. 79. The publication must be made four consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county; and if there be not, in some newspaper printed in this territory of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

When such service is complete, and how proved.

SEC. 80. Service by publication shall be deemed complete when it shall have been made in the manner and for the time prescribed in the preceding section; and such service shall be proved by the affidavit of the printer, or his foreman or principal clerk, or other person knowing the same.

Where suit may be brought in case of non-resident defendants, etc.

SEC. 81. In all cases where service may be made by publication, and in all other cases where the defendants are non-residents, and the cause of action arose in the territory, suit may be brought in the county where the cause of action arose, and personal service of the summons may be made out of the territory by the sheriff or some person appointed by him for that purpose. In all cases where service of a summons is made on a person without the territory, proof of such service must be made by affidavit, stating the time and manner of service, and such service shall be made in the same manner as summonses are served on parties residing within this territory.

Judgment against party served by publication may be opened upon terms.

SEC. 82. A party against whom a judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened, and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intention to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defense; but the title to any property, the subject of the judgment or order sought to be opened, which, by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make his defense.

Effect on purchasers.

How to proceed in actions against unknown heirs.

SEC. 83. In actions where it shall be necessary to make the heirs or devisees of any deceased person defendants, and it shall appear, by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residence, are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service as may be deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

Proceedings where there are several defendants and part only served.

SEC. 84. Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise direct.

Second. If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

Pendency of action protects plaintiff's title.

SEC. 85. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title.

Judgment to be notice only in the county where rendered unless recorded elsewhere.

SEC. 86. When any part of the real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the clerk's office of such other county or counties, before it shall operate therein as a notice, so as to charge third persons as provided in the preceding section. It shall operate as such notice, without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute now in force, which does not require such record.

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TITLE VI.

JOINDER IN ACTIONS.

What causes of action may be joined in the same petition.

SEC. 87. The plaintiff may unite several causes of action in the same petition, when they are included in either one of the following classes:

First. The same transaction or transactions connected with the same subject of action.

Second. Contracts, express or implied.

Third. Injuries, with or without force, to person and property, or either.

Fourth. Injuries to character.

Fifth. Claims to recover the possession of personal property, with or without damages for the withholding thereof.

Sixth. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same.

Seventh. Claims against a trustee by virtue of a contract, or by operation of law.

SEC. 88. The causes of action so united must affect all the parties to the action, and not require different places of trial.

TITLE VII.

PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

PLEADINGS IN GENERAL.

Pleadings.

SEC. 89. The pleadings are the written statements, by the parties, of the facts constituting their respective claims and defenses.

Rules of pleadings heretofore existing abolished.

SEC. 90. The rules of pleading heretofore existing in civil actions are abolished; and hereafter the forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined, are those prescribed by this code.

Pleadings allowed by the code.

SEC. 91. The only pleadings allowed are —

First. The petition by the plaintiff.

Second. The answer or demurrer by the defendant.

Third. The demurrer, or reply by the plaintiff.

Fourth. The demurrer to the reply by the defendant.

CHAPTER II.

THE PETITION.

What petition must contain.

SEC. 92. The petition must contain —

First. The name of the court and county in which the action is brought, and the names of the parties, plaintiff and defendant.

Second. A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition.

Third. A demand of the relief to which the party supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated; and if interest thereon be claimed, the time from which interest is to be computed, shall also be stated.

SEC. 93. Where the petition contains more than one cause of action, each shall be separately stated and numbered.

Each cause of action to be stated.

CHAPTER III.

DEMURRER.

SEC. 94. The defendant may demur to the petition only when it appears on its face, either—

When defendant may demur.

First. That the court has no jurisdiction of the person of the defendant, or the subject of the action.

Second. That the plaintiff has not legal capacity to sue.

Third. That there is another action pending between the same parties for the same cause.

Fourth. That there is a defect of parties, plaintiff or defendant.

Fifth. That several causes of action are improperly joined.

Sixth. That the petition does not state facts sufficient to constitute a cause of action.

SEC. 95. The demurrer shall specify distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action.

Demurrer must specify grounds of objection.

SEC. 96. When any of the defects enumerated in section ninety-four do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

Objections not appearing on face of petition may be taken by answer.

SEC. 97. When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs, in its discretion, to file several petitions, each including such of said causes of action as might have been joined; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

If causes of action be misjoined, court may direct separate suits.

Defendant may demur to part, and answer part.

SEC. 98. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue.

CHAPTER IV.

ANSWER.

The answer, and what it must contain.

SEC. 99. The answer shall contain—

First. A general or specific denial of each material allegation of the petition controverted by the defendant.

Second. A statement of any new matter constituting a defense, counter-claim or set-off, in ordinary and concise language, and without repetition.

Different grounds of defense may be set forth in the answer.

SEC. 100. The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off as he may have. Each must be separately stated and numbered, and they must refer in an intelligible manner to the cause of action which they are intended to answer.

Counter-claim, of what it consists.

SEC. 101. The counter-claim, mentioned in the last section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

No costs recoverable on counter-claim or set-off in certain cases.

SEC. 102. If the defendant omit to set up the counter-claim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections one hundred and three and one hundred and twenty-six.

New party to be made if necessary.

SEC. 103. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made by a summons, to reply to the counter-claim, or may direct the counter-claim to be stricken out of the answer, and made the subject of a separate action.

Set-off, what and when it can be pleaded.

SEC. 104. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

New party to be made if necessary.

SEC. 105. When it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appear that owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

SEC. 106. When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counter-claim or set-off could have been set up, neither can be deprived of the benefit thereof by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

When cross demands are to be deemed compensated.

SEC. 107. The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

Guardian, etc., to deny allegations of the petition.

CHAPTER V.

REPLY.

SEC. 108. There shall be a reply or demurrer to every material allegation of new matter set up in the defendant's answer, and every material allegation of new matter in the answer not controverted by the reply of the plaintiff, shall, for the purposes of the action, be taken as true; but the allegations of new matter in the reply shall be deemed controverted by the adverse party. Allegations of value, or of amounts of damages, shall not be considered as true by failure to controvert them.

Reply.

SEC. 109. When the answer contains new matter, constituting a counter-claim or set-off, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him; and he may allege, in ordinary and concise language and without repetition, any new matter not inconsistent with the petition, constituting a defense to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may demur to one or more of such defenses set up in the answer, and reply to the residue.

What the reply may contain.

CHAPTER VI.

GENERAL RULES OF PLEADING.

SEC. 110. The answer or demurrer of the defendant shall be filed on or before the third Monday, and the reply or demurrer of the plaintiff on or before the fifth Monday, after the return day of the summons or service by publication.

Answer or demurrer, when filed.

Time for pleadings may be extended.

SEC. 111. The court, or the judge thereof in vacation, for good cause shown, may extend the time for filing an answer or reply, upon such terms as may be just.

Pleadings to be subscribed.

SEC. 112. Every pleading in a court of record must be subscribed by the party or his attorney.

Pleadings to be verified.

SEC. 113. Every pleading of fact must be verified by the affidavit of the party, his agent or attorney. A pleading verified as herein required, shall not be used against a party in any criminal prosecution or action, or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

Certain pleadings are not to be verified.

SEC. 114. The verification mentioned in the last section shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution.

One of several parties may verify.

SEC. 115. If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties.

What affidavit sufficient

SEC. 116. The affidavit shall be sufficient if it state that the affiant believes the facts stated in the pleading to be true.

Verification of non-resident of the county.

SEC. 117. In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby.

Verification to be signed and certified.

SEC. 118. The affidavit verifying pleadings, may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken, shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer.

To what verification shall apply.

SEC. 119. The verification of the pleading does not apply to the amount claimed, except in actions founded on contracts, express or implied, for the payment of money only.

Verification by agent or attorney.

SEC. 120. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney, only —

First. When the facts are within the personal knowledge of the agent or attorney.

Second. When the plaintiff is an infant, or of unsound mind, or imprisoned.

Third. When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney.

Fourth. When the party is not a resident of or is absent from the county.

Pleadings to be liberally construed.

SEC. 121. In the construction of any pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Fictions abolished.

SEC. 122. All fictions in pleadings are abolished.

No change of title to a cause.

SEC. 123. The title of a cause shall not be changed in any of its stages.

Copies of notes, etc., to be filed with pleadings.

SEC. 124. If the action, counter-claim or set-off be founded on an account, or on a note, bill or other written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, except in actions founded upon notes issued to circulate as money. If not so attached and filed, the reason thereof must be shown in the pleading.

Redundant or irrelevant matters may be stricken out

SEC. 125. If redundant, scandalous or irrelevant matter be inserted in any pleading, it may be stricken out, on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Counter-claim or set-off may be made the subject of a separate proceeding.

SEC. 126. The court, at any time before the final submission of the cause, on motion of the defendant, may allow a counter-claim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counter-claim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

Facts conferring jurisdiction need not be stated.

SEC. 127. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Performance of conditions precedent need not be specially stated.

SEC. 128. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

What sufficient to state in actions upon written instrument.

SEC. 129. In an action, counter-claim or set-off, founded upon an account, promissory note, bill of exchange or other instrument, for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and indorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

Pleading statute.

SEC. 130. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Pleading in actions for libel or slander.

SEC. 131. In an action for a libel or slander, it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial the facts, showing that the defamatory matter was published or spoken of him.

Allegation of truth and mitigating circumstances.

SEC. 132. In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

Real property must be described.

SEC. 133. In an action for the recovery of real property, it shall be described with sufficient certainty to enable an officer holding an execution to identify it.

Every material allegation not controverted to be taken as true.

SEC. 134. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer, constituting a counter-claim or set-off, not controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in the answer, not relating to a counter-claim or set-off, or of new matter in reply, shall be deemed to be controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them.

What is a material allegation.

SEC. 135. A material allegation in a pleading is one essential to the claim or defense, which could not be stricken from the pleading without leaving it insufficient.

Presumptions of law, etc.

SEC. 136. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.

Copies may be substituted.

SEC. 137. If an original pleading be lost, or witheld by any person, the court may allow a copy thereof to be substituted.

CHAPTER VII.

MISTAKES IN PLEADING, AND AMENDMENTS.

Variance in pleading not material, unless the adverse party has been misled.

SEC. 138. No variance between the allegation in a pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as may be just.

Fact to be found according to evidence, and amendment made.

SEC. 139. Whenever the variance is not material, as provided in the last section, the court may direct the fact to be found, according to the evidence, and may order an immediate amendment without costs.

If claim or defense is wholly unproved, not a case of variance.

SEC. 140. When, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

Plaintiff may amend his petition without leave before answer.

SEC. 141. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the defendant shall have the same time to answer or demur thereto as to the original petition.

Amendments on demurrer.

SEC. 142. At any time within ten days after a demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading.

Party may reply after

SEC. 143. Upon a demurrer being overruled, the party his demurrer is overruled.

who demurred may answer or reply, if the court be satisfied that he has a meritorious claim or defense, and did not demur for delay.

Court may amend pleading at any time.

SEC. 144. The court may, before judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And whenever any proceeding taken by a party fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment.

Court shall disregard errors not affecting substantial rights.

SEC. 145. The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

If demurrer sustained, amendments may be allowed.

SEC. 146. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by way of amendment, with or without costs, as the court in its discretion shall direct.

After amendment further time may be granted for trial.

SEC. 147. When either party shall amend any pleading or proceeding, and the court shall be satisfied, by affidavit or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

When party may be sued by a fictitious name.

SEC. 148. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant.

Supplemental petition, answer or reply.

SEC. 149. Either party may be allowed, on notice, and on such terms as to costs as the court may prescribe, to file a supplemental petition, answer or reply, alleging facts material to the case, occurring after the former petition, answer or reply.

Actions which might have been joined, may be consolidated

SEC. 150. Whenever two or more actions are pending in the same court which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no such cause be shown, the said several actions shall be consolidated.

By whom order made.

SEC. 151. The order for consolidation may be made by the court, or by a judge thereof in vacation.

TITLE VIII.

PROVISIONAL REMEDIES.

CHAPTER I.

ARREST AND BAIL.

Arrest in civil actions only as prescribed by the code.

SEC. 152. A defendant in a civil action can be arrested before and after judgment, in the manner prescribed by this code, and not otherwise; but this provision does not apply to proceedings for contempt; nor does it apply to actions or judgments prosecuted in the name of the territory of Nebraska, to recover fines or penalties for crimes, misdemeanors or offenses.

By whom and when an order of arrest is to be made.

SEC. 153. An order for the arrest of the defendant shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any judge of any court of the territory, or clerk thereof, or justice of the peace, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars:

First. That the defendant has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to defraud his creditors.

Second. That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors.

Third. That he has property, or rights of action, which he fraudulently conceals.

Fourth. That he has assigned, removed, disposed of or has begun to dispose of his property, or a part thereof, with intent to defraud his creditors.

Fifth. That he fraudulently contracted the debt, or incurred the obligation, for which suit is about to be or has been brought.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

Not to be issued unless bond is given.

SEC. 154. The order of arrest shall not be issued by the clerk until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit.

When it may issue.

SEC. 155. The order may be made to accompany the summons, or at any time afterwards, before judgment.

The order of arrest and its contents.

SEC. 156. The order of arrest shall be addressed and delivered, with a copy of the affidavit, to the sheriff. The order shall state the names of the parties, the court in which the action was brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant, and hold him to bail in double the sum stated in the affidavit, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given.

When returnable.

SEC. 157. The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be fifteen days after it issued.

How executed.

SEC. 158. The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof, and of the affidavit. If the defendant cannot be found before the return day, the plaintiff shall be entitled to further orders without other affidavit or undertaking, until the defendant is arrested; but orders of arrest shall not be issued to any other than the county in which the action is brought.

What to be done with defendant.

SEC. 159. The defendant, when arrested, shall be committed by the sheriff to the jail of the county, and kept in custody until discharged by law.

Defendant may deposit money and be discharged.

SEC. 160. The defendant may, before or after giving bail, deposit in the hands of the sheriff, or in the court, the amount of money mentioned in the order of arrest; whereupon he shall be discharged, or his bail, if any be given, shall be released.

Money to be paid into court.

SEC. 161. The sheriff shall pay into court the money received by him in lieu of bail; if received in vacation, he shall pay it on the first day of the next term; if received during a term, he shall pay it in immediately.

Court to

SEC. 162. The court shall make proper orders for the safe keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and after final judgment in the action, shall order it to be paid to the party entitled thereto, according to the result. have control of money.

Sec. 163. Money so deposited with the sheriff, in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency. Sheriff and sureties liable for such money.

Sec. 164. Bail may be given by the defendant on his arrest, or at any time afterwards, before judgment. It shall be done by causing one or more sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking, when accepted, shall be returned to the clerk's office, and the defendant discharged. Defendant may give bail. How done.

Sec. 165. The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking of the bail has been given; within such time he shall serve upon the sheriff a written notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. When the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof. Plaintiff may object to bail.

Sec. 166. On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney, notice in writing of the justification of the same or other bail, before a judge, or clerk of the court, in which the action is brought, a probate judge, or justice of the peace, at a specified time and place: the time to be not less than five nor more than ten days thereafter. In case other bail be given, there must be a new undertaking. Justification of bail.

Sec. 167. For the purpose of justification, each of the bail must attend before the proper officer at the time and place mentioned, and may be examined on oath or affirmation touching his sufficiency, in such manner as the officer may think proper. Manner of justification

Sec. 168. If the officer finds the bail sufficient, he shall indorse his allowance on the undertaking, and cause the same to be filed with the clerk; and the sheriff shall thereupon be discharged from liability. Allowance of bail.

Sec. 169. If, after being arrested, the defendant escape or be rescued, or bail be not taken or be adjudged insuffi- When sheriff liable as bail, and how discharged. cient, or a deposit be not made, the sheriff shall be liable as bail. But he may discharge himself from liability by putting in sufficient bail at any time before judgment.

Liability of sheriff, how fixed and sued. SEC. 170. The return of "not found" upon an execution against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest and costs. This liability can be enforced only in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency.

Bail adjudged insufficient liable to sheriff. SEC. 171. The bail adjudged insufficient shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency.

Liability of bail, how fixed and sued. SEC. 172. The liability of the bail shall be fixed in the manner provided in section one hundred and seventy, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only.

Defendant may be surrendered in discharge of bail. SEC. 173. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender be made by the defendant himself or by his bail, shall discharge the bail; and such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody upon said copy of the undertaking of the bail, as upon an order of arrest. On the production of the sheriff's acknowledgment of the surrender, to the clerk of the court, an exoneration of the bail shall be entered on his undertaking.

Bail may arrest the defendant. SEC. 174. For the purpose of surrendering the defendant, the bail, at any time or place, before he is finally charged, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

What will exonerate bail. SEC. 175. The bail will be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execution thereof, within the time fixed in section one hundred and seventy-three, or within such further time as the court in which the action is pending may allow.

Bail may be substituted for a deposit of money. SEC. 176. If money be deposited by the defendant in his discharge, bail may be given and justified upon notice as prescribed in section one hundred and sixty-six at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly.

When proceedings against bail may be stayed, and bail discharged.

SEC. 177. If, at any time before or after judgment against the bail, proceedings in error are commenced on the judgment against the principal in the suit in which their undertaking was taken, the court may, on motion, stay proceedings against such bail for a reasonable time, on their paying all the costs that have accrued against them; and if, on such proceedings, the judgment against the principal shall be reversed, and the principal discharged from said suit, the bail shall be discharged from the undertaking.

Defendant may move to vacate the order of arrest or reduce the amount of bail.

SEC. 178. A defendant arrested may at any time before the justification of the bail, apply, on motion, to the court in which the suit is brought, if in session, and in vacation to a judge thereof, or to any judge of a court of record of the territory, to vacate the order of arrest, or to reduce the amount of bail. Reasonable notice of such motion must be given to the plaintiff.

Motion may be supported and opposed by affidavit.

SEC. 179. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of arrest was made.

Jail fees to be paid by plaintiff.

SEC. 180. Any person causing another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for jail fees, and shall, if required by the jailer, pay such fees weekly in advance; and such fees, so paid, shall be a part of the costs of the case.

CHAPTER II.

REPLEVIN OF PROPERTY.

When delivery of property may be claimed.

SEC. 181. The plaintiff in an action to recover the possession of specific personal property, may at the commencement of the suit, or any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Affidavit of plaintiff, and causes for delivery.

SEC. 182. An order for the delivery of property to the plaintiff, shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing —

First. A description of the property claimed.

Second. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.

Third. That the property is wrongfully detained by the defendant.

Fourth. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against the plaintiff.

Order of delivery and its contents.

SEC. 183. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

When returnable.

SEC. 184. The return day for the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

How executed.

SEC. 185. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence.

Plaintiff to give bond.

SEC. 186. The sheriff or other officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him. The undertaking shall be returned with the order.

Value of property how fixed.

SEC. 187. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

Officers' duty and liability as to the property if plaintiff fail to give bond

SEC. 188. If the undertaking, required by section one hundred and eighty-six, be not given within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Qualification of sureties, etc

SEC. 189. The defendant may, within twenty-four hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided, or until they justify. The property shall be delivered to the plaintiff, when the undertaking, required by section one hundred and eighty-six, has been given.

Proceedings in the action.

SEC. 190. If the property has been delivered to the plaintiff, and judgment be rendered against him on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impannel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

Same.

SEC. 191. In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined, for the defendant, they shall also find whether the defendant had the right of property or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

Same.

SEC. 192. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property; for which, with costs of suit, the court shall render judgment for defendant.

Same.

SEC. 193. When the property claimed has not been taken, or has been returned to the defendant by the sheriff for want of the undertaking required by section one hundred and eighty-six, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and eighty-six, the plaintiff shall pay all costs made by taking the same.

Orders may be issued to different counties.

SEC. 194. An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

When officer may break open buildings.

SEC. 195. The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

When action may be brought on plaintiff's bond.

SEC. 196. No suit shall be instituted on the undertaking given under section one hundred and eighty-six, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

When order may be set aside at clerk's costs

SEC. 197. Any order for the delivery of property issued under section one hundred and eighty-two, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

CHAPTER III.

ATTACHMENT.

ARTICLE I.

GENERAL ATTACHMENTS.

SUBDIVISION 1.

Grounds of Attachment.

Grounds of attachment.

SEC. 198. The plaintiff, in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First. When the defendant or one of several defendants, is a foreign corporation, or a non-resident of this territory; or,

Second. Has absconded with the intent to defraud his creditors; or,

Third. Has left the county of his residence, to avoid the service of a summons; or,

Fourth. So conceals himself that a summons cannot be served upon him; or,

Fifth. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

Sixth. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

Seventh. Has property, or rights in action, which he conceals; or,

Eighth. Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or,

Ninth. Fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this territory, for any claim other than a debt or demand arising upon contract, judgment or decree.

SUBDIVISION 2.

How an Attachment is obtained.

SEC. 199. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing— **Affidavit necessary.**

First. The nature of the plaintiff's claim.

Second. That it is just.

Third. The amount which the affiant believes the plaintiff ought to recover.

Fourth. The existence of some one of the grounds for an attachment, enumerated in the preceding section.

SEC. 200. When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of this territory, the order of attachment may be issued without an undertaking. **When bond not required** In all other cases, the order of attachment shal not be issued by the clerk until there has been executed his office, by one or more sufficient sureties of **When bond required.**

the plaintiff, to be approved by the clerk, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order be wrongfully obtained.

Order of attachment, how executed.

SEC. 201. The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Orders of attachment may issue to several counties.

SEC. 202. Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court.

When returnable.

SEC. 203. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

SUBDIVISION 3.

Execution and Return thereof.

When several to be executed in the order received.

SEC. 204. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they are received by the sheriff.

How order executed.

SEC. 205. The order of attachment shall be executed by the sheriff without delay. He shall go to the place where the defendant's property may be found, and there, in the presence of two residents of the county, declare that by virtue of said order he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and residents, and returned with the order. Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order. Where it is personal property, and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

When property attached may be de-

SEC. 206. The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.

livered to the person with whom found.

Proceedings against a garnishee.

SEC. 207. When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear in court, at the return of the order of attachment, and answer, as provided in section two hundred and twenty-one.

How served.

SEC. 208. The copy of the order and the notice shall be served upon the garnishee as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other officer of the same, or a managing agent thereof.

Different attachments may be made by the same officer.

SEC. 209. Different attachments of the same property may be made by the same officer, and one inventory and appraisement shall be sufficient, and it shall not be necessary to return the same with more than one order.

When property attached under subsequent orders.

SEC. 210. Where the property is under attachment, it shall be attached under subsequent orders as follows:

First. If it be real property, it shall be attached in the manner prescribed in section two hundred and five.

Second. If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment.

Third. If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section two hundred and seven.

Form of return.

SEC. 211. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return with the order all undertakings given under it.

When property and garnishee bound.

SEC. 212. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section two hundred and seven; but where the property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

SUBDIVISION 4.

Disposition of Attached Property.

Receiver may be appointed.

SEC. 213. The court, or any judge thereof during vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the territory of Nebraska, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of the court, for the faithful performance of his duty as such receiver, and to pay over all money, and account for all property, which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.

Shall take possession of notes and books, and settle the same.

SEC. 214. Such receiver shall take possession of all notes, due bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own name as such receiver; but in such actions no right of defense shall be impaired or affected.

Shall give notice of his appointment.

SEC. 215. Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally, or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

Shall report his proceedings.

SEC. 216. Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court.

Where a receiver is not appointed, the sheriff shall perform the same duties.

SEC. 217. Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and thirteen, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security, other than his official undertaking.

How property attached disposed of.

SEC. 218. The court shall make proper orders for the preservation of the property during the pendency of the suit. It may direct a sale of property when, because of its perishable nature, or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirement and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail.

SUBDIVISION 5.

Proceedings upon Attachment.

Defendant may discharge attachment at any time before judgment.

SEC. 219. If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

May be done in vacation.

SEC. 220. The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the sureties in either case to be approved by the officer before whom the undertaking is executed.

Garnishee shall appear and make disclosure.

SEC. 221. The garnishee shall appear as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer, under oath, all the questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and, in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice.

Garnishee may pay money to sheriff or into court.

SEC. 222. A garnishee may pay the money owing to the defendant by him, to the sheriff having the order of attachment, or into court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

When garnishee may be attached for contempt.

SEC. 223. If the garnishee do not appear in court and answer, as required by section two hundred and twenty-one, the court may proceed against him by attachment as for a contempt.

Disposition of property in hands of garnishee.

SEC. 224. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

When plaintiff may proceed in action against the garnishee.

SEC. 225. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the court, or deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

As to the action against garnishee.

SEC. 226. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

If judgment be for defendant, attachment discharged.

SEC. 227. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him.

If judgment be for plaintiff, money and property to be subjected to its payment.

SEC. 228. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and the execution may issue thereon, for the residue, in all respects as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

Court may enforce the delivery of property, as for contempt.

SEC. 229. The court may compel the delivery to the sheriff, for sale of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments as in cases of contempt.

May order sheriff to repossess himself of property attached.

SEC. 230. The court may order the sheriff to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as he would have under an order of attachment.

When property is claimed

SEC. 231. If personal property which has been attached, be claimed by any person other than the defendant, it shall by a third person how to proceed. be the duty of the officer to have the validity of such claim tried, and such proceedings must be had thereon, with the like effect, as in case the property had been seized upon execution, and claimed by a third person.

When question of priority may be referred. SEC. 232. Where several attachments are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments.

SUBDIVISION 6.

General Provisions.

Proceedings not to end by death of the defendant. SEC. 233. From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings under this chapter; and if, after the issuing of the order, the defendant, being a person, should die, or a corporation and its charter should expire by limitation, forfeiture or otherwise, the proceeding shall be carried on; but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

When plaintiff may be required to give additional security. SEC. 234. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this territory, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

Motion to discharge attachment. SEC. 235. The defendant may at any time before judgment, upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or a part of the property attached.

What evidence may be used on such motion. SEC. 236. If the motion be made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.

ARTICLE II.

ATTACHMENTS IN CERTAIN ACTIONS.

Action and attachment on a claim not due. SEC. 237. A creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor, in the following cases:

First. Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts.

Second. Where he is about to make such sale, conveyance or disposition of his property, with such fraudulent intent.

Third. Where he is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts.

How the same to be granted.

SEC. 238. The attachment authorized by the last section, may be granted by the court in which the action is brought, or by a judge thereof, or by the probate judge of the county; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent or attorney, shall make an oath, in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment ennmerated in the preceding section.

Action to be dismissed if attachment refused.

SEC. 239. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions application for an attachment must be made.

Order to specify amount for which it is allowed.

SEC. 240. The order of the court or judge granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

Bond to be executed before order issues.

SEC. 241. The order of attachment as granted by the court or judge, shall not be issued by the clerk until there has been executed in his office such undertaking on the part of the plaintiff as is directed by section two hundred.

Action to be continued until claim is due.

SEC. 242. The plaintiff in such action shall not have judgment on his claim before it becomes due, and the proceedings on attachment may be conducted without delay.

How proceedings under this article regulated.

SEC. 243. The proceedings in the first article of this chapter subsequent to section two hundred, shall, so far as they are applicable, regulate the attachments authorized by this article.

ARTICLE III.

GARNISHMENT IN CERTAIN CASES.

In what cases writ of garnishment shall issue.

SEC. 244. In all cases where an execution issued upon any judgment of a court of record or of a justice of the peace, shall be returned by the officer in whose hands the same was placed for service, unsatisfied for want of sufficient property whereof to levy and collect the same, and the judgment creditor in such execution, his agent or attorney, shall file an affidavit in the office of the clerk of the court, or justice of the peace, from which said execution issued, that he has good reason to and does believe that any person or corporation (naming them) have property of and are indebted to the judgment debtor, the said clerk, or justice of the peace, shall issue a summons, as in other cases, requiring such person or corporation to appear in court and answer such interrogatories as shall be propounded to him, it or them, touching the goods, chattels, rights and credits of the said judgment debtor in his, its or their possession or control.

Garnishees to be liable as in case of garnishment before judgment.

SEC. 245. The summons shall be made returnable, and the said persons or corporations shall be required to appear, as in ordinary cases of summons, and thereafter like proceedings shall be had therein, and said garnishees shall be held liable, in all respects, as in cases of garnishees before judgment.

Summons to be served as in original action. Liability of garnishees.

SEC. 246. The summons shall be served as a summons in an original action is served; the said persons or corporations so summoned shall be liable to the judgment creditor in said execution for all property, moneys and credits in his, its or their hands, or due from him, it or them to the judgment debtor in said execution, at the time of, and which may come into his, its or their hands or control after, the service of said summons.

Proceedings not to be quashed by reason of informality.

SEC. 247. No proceedings against such garnishee or garnishees shall be quashed, or such garnishee or garnishees discharged, by reason of any informality or irregularity, merely, of the affidavit or summons provided for in this article.

Proceedings where garnishee discloses possession of property.

SEC. 248. In cases where the garnishee, in answering such interrogatories, shall disclose that he has property in his possession or under his control, belonging to the defendant or defendants in execution, the court shall order the same to be taken and sold by the officers upon execution, as in other cases.

Proceedings where garnishee discloses that he is indebted to defendant

SEC. 249. In cases where the garnishee, in answering such interrogatories, shall disclose that he is indebted to the defendant in execution, the court shall order the garnishee to pay over the amount found to be due from the said garnishee to the defendant in execution, which amount shall be collected by execution, as in other cases, as near as may be, and such amount, when paid or collected, shall be credited on the original judgment, and the garnishee shall be credited for the amount so paid or collected.

CHAPTER IV.

INJUNCTION.

Injunction what.

SEC. 250. The injunction provided by this code is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed, it shall be by order. The writ of injunction is abolished.

Causes for injunction.

SEC. 251. When it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

When and by whom injunction may be granted.

SEC. 252. The injunction may be granted at the time of commencing the action, or at any time afterward, before judgment, by the supreme court or any judge thereof, the district court or any judge thereof, or, in the absence from the county of said judges, by the probate judge thereof, upon it appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

Court or judge may direct notice to be given before granting an injunction.

SEC. 253. If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the meantime, restrain such party.

Notice, when required.

SEC. 254. An injunction shall not be granted against a party who has answered, unless upon notice; but such party may be restrained, until the decision of the application for an injunction.

Bond required.

SEC. 255. No injunction, unless provided by special statute, shall operate, until the party obtaining the same shall give an undertaking, executed by one or more sufficient sureties, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

To whom order addressed, and as to service thereof.

SEC. 256. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of the application for an injunction, shall be notice of its allowance.

As to service of injunction.

SEC. 257. Where the injunction is allowed during the litigation and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

When binding.

SEC. 258. An injunction binds the party, from the time he has notice thereof, and the undertaking required by the applicant therefor is executed.

When not to be granted.

SEC. 259. No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court; and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant by a court of inferior jurisdiction or any judge thereof.

Disobedience of an injunction may be punished.

SEC. 260. An injunction granted by a judge may be enforced as the act of the court. Disobedience of an injunction may be punished as a contempt by the court, or by any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars for the use of the county, to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

Party enjoined may apply for further security.

SEC. 261. A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the territory, or is insufficient, the court may vacate the injunction, unless in a reasonable time sufficient security be given.

SEC. 262. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed. **Affidavits on hearing application.**

SEC. 263. If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court. **Motion to vacate or modify injunction.**

SEC. 264. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the injunction was granted. **Affidavits on motion.**

SEC. 265. A defendant may obtain an injunction upon an answer in the nature of a counter-claim. He shall proceed in the manner prescribed in this chapter. **A defendant may obtain an injunction.**

CHAPTER V.

RECEIVERS.

SEC. 266. A receiver may be appointed by the supreme court, or the district court, or by the judge of either, in the following cases: **Cases in which a receiver may be appointed.**

First. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund on the application of any party to the suit, when the property or fund is in danger of being lost, removed or materially injured.

Second. In an action for the foreclosure of a mortgage, when the mortgaged property is in danger of being lost, removed or materially injured, or is probably insufficient to discharge the mortgage debt.

Third. After judgment, or decree to carry the same into execution, or to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal.

Fourth. In all cases provided for by special statutes.

Fifth. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Notice to be given in case of application for appointment of receiver.

SEC. 267. No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver, and of his proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served upon the adverse party, or his solicitor, at least five days before the proposed hearing, and one additional day for every thirty miles of travel from the place of serving the notice to the place where the application is to be made, by the usually traveled route, or shall be published in the same manner as notices of the pendency of suits to non-resident defendants.

Sheriff may take possession of property in certain cases.

SEC. 268. Should the delay occasioned by the giving the notice provided for in the last preceding section be hazardous to the rights of any party, the court or judge may, by order, direct the sheriff of the county in which such action is pending, to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if at such hearing the application is refused, restitution shall be made of the property to the party from whom the same was taken.

Applicant and receiver to give bond

SEC. 269. Every order appointing a receiver shall require the applicant to give a bond, conditioned to pay all damages which the other parties to the suit, or any of them, may sustain, by reason of the appointment of the receiver, in case it shall be finally decided that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver, and obey all orders of the court. The said bonds shall each run to the defendant and all adverse parties in interest, and be for the use of any party to the suit, and be in a penal sum equal to double the value of the property in question, and be executed by two or more sureties, to be approved by the court or judge making the appointment, and be filed in the county clerk's office; nor shall the same be considered executed until they are so filed.

Prayer for appointment in bill.

SEC. 270. If a complainant shall desire the appointment of a receiver at the commencement of the action, he shall pray such appointment in his bill. If the occasion for a receiver shall arise while the suit is pending, the application shall be made by a petition entitled in the cause, signed and verified by the applicant, and setting forth the facts and circumstances making such appointment necessary or proper.

Party to suit may show objections to sureties, etc.

SEC. 271. Any party to the suit may, upon the hearing of the application, show, by affidavit or otherwise, objections to the proposed sureties, and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time the names of his proposed sureties. No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.

Directions to be given to receiver.

SEC. 272. Every order appointing a receiver shall contain special directions in respect to its powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the court or judge as may in the further progress of the cause become proper.

SEC. 273. Every receiver shall be considered the receiver of any party to the suit, and no others.

Order without notice void.

SEC. 274. Every order appointing a receiver without the notice provided for herein, shall be void, and every such order heretofore made,. under which the appointee has not possessed himself of the property in question, shall be suspended until an order shall have been made, and the bonds executed and filed in accordance with the provisions of this chapter.

Proceedings when decrees are not final.

SEC. 275. When a decree shall be rendered in a suit in which a receiver has been appointed, and such decree shall not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof in the receiver's hands. If such application be resisted, the matter may be referred to a master, to take and report to the court the testimony of the parties. And on the coming in of said report, the court shall, by its order, award the possession of the property and the proceeds thereof to the party entitled thereto; and thereupon the receiver shall surrender the property and the proceeds thereof to such party. All orders appointing receivers, giving them further directions and disposing of the property, may be appealed to the supreme court in the same manner as final orders and decrees.

Contempt of order.

SEC. 276. Whenever, in the exercise of its authority, the court shall have ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, in addition to punishing such disobedience, as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court.

TITLE IX.

PROCEEDINGS BEFORE THE COURT.

CHAPTER I.

ISSUE.

Issues are of two kinds.

SEC. 277. Issues arise on the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds—

First. Of law.

Second. Of fact.

Upon what issues of fact arise.

SEC. 278. An issue of fact arises—

First. Upon a material allegation in the petition denied by the answer.

Second. Upon a set-off or counter-claim presented in the answer and denied by the reply.

Third. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II.

TRIAL.

ARTICLE I.

TRIAL IN GENERAL.

Trial.

SEC. 279. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

Issues of law to be tried by the court

Issues of fact by a jury, unless waived.

SEC. 280. Issues of law must be tried by the court, unless referred as provided in section two hundred and ninety-eight. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

Other issues

SEC. 281. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

ARTICLE II.

TRIALS BY JURY.

SUBDIVISION 1.

Formation of the Jury.

SEC. 282. The general mode of summoning, impanneling, challenging and swearing the jury, is not changed by this code.

SUBDIVISION 2.

Conduct of the Trial.

Mode of conducting trial.

SEC. 283. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise direct:

First. The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it.

Second. The defendant must then briefly state his defense, and may briefly state the evidence he expects to offer in support of it.

Third. The party who would be defeated if no evidence were given on either side, must first produce his evidence; the adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it.

Sixth. The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence shall have the opening and conclusion. If several defendants having separate defenses, appear by different counsel, the court shall arrange their relative order.

Seventh. The court may again charge the jury after the argument is concluded.*

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* See page 55, *infra*.

Jury may view property in litigation, or place where a material fact occurred.

SEC. 284. Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed, shall speak to them on any subject connected with the trial.

Duty of jury after a cause is submitted.

SEC. 285. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Duty of officer.

When jury separate, court must admonish them.

SEC. 286. If the jury are permitted to separate either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person, on the subject of the trial, and that it is their duty not to form or express any opinion thereon, until the cause is finally submitted to them.

If jury disagree as to law or fact, they may be brought into court.

SEC. 287. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in the presence of or after notice to the parties or their counsel.

Causes for which a jury may be discharged.

SEC. 288. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

If jury are discharged, cause may be tried again.

SEC. 289. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

SEC. 290. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

Manner of rendering verdict; jury may be polled.

SEC. 291. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagree, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Verdict must be in writing and signed by foreman.

Court may correct error in form of verdict.

SUBDIVISION 3.

Verdict.

SEC. 292. The verdict of a jury is either general or special. A general verdict is that by which they pronounce, generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

The verdict may either be general or special.

SEC. 293. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict, in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered on the journal.

Jury have discretion to find general or special verdict.

SEC. 294. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

Special finding prevails over the general.

SEC. 295. When by the verdict either party is entitled to recover money of the adverse party, the jury in their verdict must assess the amount of recovery.

Jury must assess the amount of recovery.

ARTICLE III.

TRIAL BY THE COURT.

Trial by jury may be waived, and cause submitted to court.

SEC. 296. The trial by jury may be waived by the parties in actions arising on contract, and with the assent of the court, in other actions, in the following manner:

First. By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney.

Second. By written consent in person, or by attorney, filed with the clerk.

Third. By oral consent in open court entered on the journal.

Court need not state facts specially unless exceptions are filed.

SEC. 297. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

ARTICLE IV.

TRIAL BY REFEREES.

All issues are referable by consent.

SEC. 298. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

When parties do not consent, court may order a reference.

SEC. 299. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in either of the following cases:

First. Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account; in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein.

Second. Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect.

Third. Where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any stage of an action.

SEC. 300. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue, stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report has the effect of a special verdict. Mode of trial. Effect of report.

SEC. 301. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception. Referees, how chosen.

SEC. 302. A reference as provided in this chapter cannot be ordered by a probate court, except by consent of parties to the reference and referees. Reference by probate court.

SEC. 303. It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same with their report to the court making the reference. Referees shall sign exceptions.

SEC. 304. A judge in vacation, upon the written consent of the parties, may make any order of reference which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court, with the other papers in the case. Reference may be made in vacation by consent of parties.

SEC. 305. The referees must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein according to the best of their understanding. The oath may be administered by any person authorized to take depositions. Oath of referees.

SEC. 306. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case. Compensation of referees.

ARTICLE V.

EXCEPTIONS.

SEC. 307. An exception is an objection taken to a decision of the court upon a matter of law. Exception.

An exception must be taken at the time. SEC. 308. The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the term.

No form necessary in stating exceptions. SEC. 309. No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

How exception to be taken when facts appear on the record. SEC. 310. Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

How exceptions settled where they do not appear on record. SEC. 311. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present it to the court for its allowance. If true, it shall be the duty of a majority of the judges composing the court to allow and sign it, whereupon it shall be filed with the pleadings as part of the record, but not spread at large on the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid.

Exception must be material. SEC. 312. No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

Exceptions may be withdrawn. SEC. 313. Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

ARTICLE VI.

NEW TRIAL.

For what causes a new trial may be granted. SEC. 314. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report or decision shall be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, referee or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Excessive damages, appearing to have been given under the influence of passion or prejudice.

Fifth. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property.

Sixth. That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.

Seventh. Newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial.

Eighth. Error of law occurring at the trial, and excepted to by the party making the application.

A new trial may not be granted, etc.

SEC. 315. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

Application for new trial must be made at the same term judgment is rendered, and within three days, unless, etc.

SEC. 316. The application for a new trial must be made at the term the verdict, report or decision is rendered, and, except for the cause of newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Grounds must be in writing, and sustained by affidavit.

SEC. 317. The application must be by motion upon written grounds, filed at the time of making the motion. The causes enumerated in subdivisions two, three and seven, of section three hundred and fourteen, must be sustained by affidavits showing their truth, and may be controverted by affidavits.

Application for new trial may be made after the term, but by action.

Proceedings thereon.

SEC. 318. Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee or decision was rendered or made, the application may be made by petition filed as in other cases; on which a summons shall issue, be returnable and served, or publication made, as prescribed in section seventy-nine. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

ARTICLE VII.

GENERAL PROVISIONS.

Plaintiff may recover damages to which he is entitled.

SEC. 319. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Trials by court, same provisions apply.

SEC. 320. The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

ARTICLE VIII.

TIME OF TRIAL.

Books to be kept by the clerk.

SEC. 321. The clerk of the district court shall keep at least five books, to be called the appearance docket, the trial docket, the journal, the record, and execution docket.

Appearance docket.

SEC. 322. On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer and his return thereon, the time of filing the petition, and all subsequent pleadings.

Trial docket

How causes set for trial.

SEC. 323. The trial docket shall be made out by the clerk of the court at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up when either party is is in default of a pleading.

Causes not to be tried in their order.

SEC. 324. The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless, by consent of the parties, or the order of the court, they are continued, or placed at the heel of the docket. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion; and may by rule prescribe the time for hearing motions.

First term the appearance term, and second term the trial term.

SEC. 325. In any civil action wherein the defendant shall answer or demur on or before the first day of the term next succeeding the service of process, such first term shall be the appearance term, and such cause shall be continued, on the application of either party, to the next term, at which time the same shall be tried, unless, for good cause, the court shall continue the same.

SEC. 326. In actions wherein default is made, judgment shall be rendered at the first term after the service of process, provided service shall be made not less than ten days before the term. When defendant is in default, judgment may be had at first term

SEC. 327. The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court. Trial docket for use of the bar.

TITLE X.

EVIDENCE.

CHAPTER I.

COMPETENCY OF WITNESSES.

SEC. 328. Every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases, civil and criminal, except as otherwise herein declared. The following persons shall be incompetent to testify: Who shall be competent witnesses.

First. Persons of unsound mind at the time of their production. Who incompetent.

Second. Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly.

Third. Husband and wife, concerning any communication made by one to the other during the marriage, whether called as a witness while that relation subsists or afterward.

Fourth. An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client's consent in open court or in writing produced in court.

Fifth. A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession.

SEC. 329. No person shall be a competent witness in Same.

any cause or proceeding wherein such person is charged with a criminal offense against the laws of this territory; nor shall any person having a direct legal interest in the result of any civil cause or proceeding, be a competent witness therein, when the adverse party is an executor, administrator or legal representative of a deceased person.

Credibility. SEC. 330. Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of lessening its credibility.

Husband and wife. SEC. 331. The husband can in no case be a witness against the wife, nor the wife against the husband, except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

Same. SEC. 332. Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal, in testimony, any such communication made while the marriage subsisted.

Communications made in professional confidence not to be disclosed. SEC. 333. No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination, shall be allowed, in giving testimony, to disclose any confidential communication, properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

Unless waived by party. SEC. 334. The prohibitions in the preceding sections do not apply to cases where the party in whose favor the respective provisions are enacted, waives the rights thereby conferred.

Public officers, SEC. 335. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Civil liability. SEC. 336. A witness is not excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.

Criminal liability. SEC. 337. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.

Previous convictions. SEC. 338. A witness may be interrogated as to his previous conviction for a felony. But no other proof of such conviction is competent except the record thereof.

Whole of a subject may be given. SEC. 339. When part of an act, declaration, conversation, or writing, is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. And when a detached act, declaration, conversation or writing, is given in evidence, any other act, declaration or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

Writing and printing.

SEC. 340. When an instrument consists partly of written and partly of printed form, the former controls the latter, where the two are inconsistent.

Understanding of parties to prevail.

SEC. 341. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

Historical works, etc.

SEC. 342. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

Subscribing witness.

SEC. 343. When a subscribing witness denies, or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.

Handwriting.

SEC. 344. Evidence respecting handwriting may be given by comparisons made, by experts or by the jury, with writings of the same person which are proved to be genuine.

Entries, etc. of deceased person, when evidence.

SEC. 345. The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

Books of account, how proven.

SEC. 346. Books of account, containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

First. The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book.

Second. It must be shown, by the party's oath, or otherwise, that they are his books of original entries.

Third. It must be shown, in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof.

Fourth. The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

Private writings may be read in evidence.

SEC. 347. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

Judge of the court a competent witness.

SEC. 348. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

Notarial protest evidence.

SEC. 349. The usual protest by a notary public, without proof of his signature or notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note.

CHAPTER II.

MEANS OF PRODUCING WITNESSES.

How the attendance of witnesses is procured.

SEC. 350. The clerks of the several courts and judges of the probate courts shall, on application of any person having a cause or any matter pending in court, issue a subpœna for witnesses under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by any person not interested in the action, or by the sheriff, coroner or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed, except when served by an officer.

The subpœna.

SEC. 351. The subpœna shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause, directing the witness to bring with him any book, writing or other thing under his control, which he is bound by law to produce as evidence.

Officer may issue subpœna.

SEC. 352. When the attendance of a witness before any officer authorized to take depositions is required, the subpœna shall be issued by such officer.

How subpœna served

SEC. 353. The subpœna shall be served either by reading, or by copy delivered to the witness or left at his usual place of residence; but such copy need not contain the name of any other witness.

Witness not compelled to attend beyond his county.

SEC. 354. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpœna is served upon him.

Witness may demand his fees.

SEC. 355. A witness may demand his traveling fees, and fee for one day's attendance, when the subpœna is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpœna. The fact of such demand and non-payment shall be stated in the return.

Contempt of court by a witness.

SEC. 356. Disobedience of a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required.

Attachment against a witness.

SEC. 357. When a witness fails to attend in obedience to a subpœna (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a time and place to be fixed in the attachment, to give his testimony, and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be endorsed on the back of the attachment, and if no sum is so fixed and endorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

Punishment of a witness for contempt.

SEC. 358. The punishment for the contempt mentioned in section three hundred and fifty-six, shall be as follows: When the witness fails to attend in obedience to the subpœna, (except in case of a demand and failure to pay his fees,) the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine the witness in a sum not exceeding fifty dollars nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, to testify, or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpœnaed. The witness shall also be liable to the party injured, for any damages occasioned by, his failure to attend, or his refusal to be sworn, to testify, or give his deposition.

Witness imprisoned may be

SEC. 359. A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge released by judge. of the supreme court, district court, or probate court, who shall have power to discharge him if it appear that his imprisonment is illegal.

Proceedings on the arrest of a witness. SEC. 360. Every attachment for the arrest or order of commitment to prison of a witness by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner or any constable of the county where such witness resides or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer.

Person in prison may be produced for examination. SEC. 361. A person confined in any prison in this territory, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

Must be under control of officer during examination. SEC. 362. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

Witness not to be sued out of his county while obeying subpœna SEC. 363. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning or attending in obedience to a subpœna.

Witness may demand fees for each day's attendance. SEC. 364. At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpœna, and if the same be not paid he shall not be required to remain.

The oath. SEC. 365. Before testifying, the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. The mode of administering an oath shall be such as is most binding upon the conscience of the witness.

CHAPTER III.

MODE OF TAKING THE TESTIMONY OF WITNESSES.

The several modes of taking testimony. SEC. 366. The testimony of witnesses may be taken in three modes:

First. By affidavit.
Second. By deposition.
Third. By oral examination.

SEC. 367. An affidavit is a written declaration under oath, made without notice to the adverse party. Affidavit.

SEC. 368. A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. Deposition.

SEC. 369. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness. Oral examination.

ARTICLE I.

AFFIDAVIT.

SEC. 370. An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process, in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law. For what purpose an affidavit may be used.

SEC. 371. An affidavit may be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and eighteen. Before whom an affidavit may be made.

ARTICLE II.

DEPOSITIONS.

SUBDIVISION 1.

When to be used.

SEC. 372. The deposition of any witness may be used only in the following cases: When deposition may be used

First. When the witness does not reside in the county where the action or proceeding is pending or is sent for trial by change of venue, or is absent therefrom.

Second. When, from age, infirmity or imprisonment, the witness is unable to attend the court, or is dead.

Third. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not reqired.

SEC. 373. Either party may commence taking testimony by depositions, at any time after service upon the defendant.

SUBDIVISION 2.

Officers who may take them.

Officers authorized to take depositions.

SEC. 374. Depositions may be taken in this territory before a judge or clerk of the supreme or district court, or before a probate judge, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this territory, to be used therein, must be taken by an officer or person whose authority is derived within the territory.

Same.

SEC. 375. Depositions may be taken out of the territory by a judge, justice, or chancelor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from this territory.

Officer must not be relative or attorney of either party

SEC. 376. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Commission to take depositions.

SEC. 377. Any court of record of this territory, or any judge thereof, is authorized to grant a commission to take depositions within or without the territory. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree.

SUBDIVISION 3.

Manner of taking and authenticating them.

Requisite of notice to take depositions.

SEC. 378. Prior to the taking of any deposition, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

Notice if adverse party be absent or

SEC. 379. When the party against whom the deposition is to be read, is absent from, or a non-resident of the territory, and has no agent or attorney of record therein, non-resident.

he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this territory, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section eighty.

By whom to be written.

SEC. 380. The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

To be sealed and forwarded to the clerk, etc.

SEC. 381. The deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

Before what tribunals they may be used.

SEC. 382. Depositions taken pursuant to this article, shall be admitted in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor or other judicial officer of a city, or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, endorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor or other judicial officer, arbitrators or referees.

When they may be used

SEC. 383. When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding, upon the same matter between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this title.

Authentication of sam

SEC. 384. Depositions taken pursuant to this article, by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same, within the meaning of this chapter, authorized to take the same. But if the deposition be taken within this territory by an officer having no seal, or within or without this territory under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

Certificate of the officer must show how and when deposition was taken.

SEC. 385. The officer taking the deposition shall annex thereto a certificate showing the following facts:

First. That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth.

Second. That the deposition was reduced to writing by some proper person (naming him).

Third. That the deposition was written and subscribed in the presence of the officer certifying thereto.

Fourth. That the deposition was taken at the time and place specified in the notice.

What facts must appear when deposition offered.

SEC. 386. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court, that for any cause specified in section three hundred and seventy-two, the attendance of the witness cannot be procured.

When to be filed.

SEC. 387. Every deposition intended to be read in evidence on the trial, must be filed at least one day before the day of trial.

Fees for taking deposition.

SEC. 388. The following fees shall be allowed for taking depositions in the territory, viz.: Swearing each witness, five cents; for each subpœna, attachment or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents and no more; and such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff or other officer who shall serve the process aforesaid, and fees of the witnesses, and may also, if directed by the persons entitled thereto, retain such depositions until the said fees are paid.

SUBDIVISION 4.

Exceptions to Depositions.

Exceptions must be in writing.

SEC. 389. Exceptions to depositions shall be in writing, specifying the grounds of objection, and filed with the papers in the cause.

Must be made before trial.

SEC. 390. No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial.

SEC. 391. The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial.

Exceptions to be considered before trial.

SEC. 392. Errors of the court in its decisions upon exceptions to depositions are waived, unless excepted to.

Errors waived, unless excepted to.

CHAPTER IV.

ADMISSION, INSPECTION AND PRODUCTION OF DOCUMENTS, AND GENERAL PROVISIONS.

SEC. 393. Either party may exhibit to the other or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of genuineness. If the adverse party or his attorney fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterwards put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear to the satisfaction of the court that there were good reasons for the refusal.

A party may be required to admit a paper to be genuine, or pay the expenses of proving it.

SEC. 394. Either party or his attorney may demand of the adverse party an inspection and copy, or permission to take a copy, of a book, paper or document in his possession or under his control, containing evidence relating to the merits of the action or defense therein. Such demand shall be in writing, specifying the book, paper or document, with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may in their discretion order the adverse party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of such book, paper or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper or document when he is examined as a witness.

Inspection and copy of books and papers, how obtained.

SEC. 395. Either party or his attorney, if required, shall deliver to the other party or his attorney, a copy of any

How copies of writings obtained.

deed, instrument or other writing, whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence, at the trial, the original, of which a copy has been refused. This section shall not apply to any paper a copy of which is filed with a pleading.

Laws of other territories, states and governments how proved.

SEC. 396. Printed copies in volumes of statutes, code, or other written law, enacted by any other territory or state, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such territory, state or government, shall be admitted by the courts and officers of this territory on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other territory, state, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

Power of officer to break into building.

SEC. 397. If a witness conceal himself, or in any other manner attempt to avoid being personally served with a subpœna, any sheriff or constable, having the subpœna, may use all necessary and proper means to serve the same, and for that purpose may break into any building or other place where the witness is to be found, having first made known his business and demanded admittance.

Parties to appear.

SEC. 398. In addition to the above remedies, if a party to a suit in his own right, on being duly subpœnaed, fail to appear and give testimony, the other party may, at his option, have a continuance of the cause as in cases of other witnesses, and at the cost of the delinquent.

Court may require production of papers, etc.

SEC. 399. The supreme or district court may, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

Petition for that purpose

SEC. 400. The petition for that purpose must state the facts expected to be proved by such books or papers, and that, as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the book and papers or show cause to the contrary, if the court deem such rule expedient and proper.

Failure to obey.

SEC. 401. On failing to obey the rule or show sufficient cause for such failure, the same consequences shall ensue as if the party had failed to appear and testify, when subpœnaed by the party now calling for the books and papers.

SEC. 402. Though a writing called for by one party is by the other produced, the party thus calling for it, is not obliged to use it as evidence in the case.

Documentary Evidence.

SEC. 403. Publications required by law to be made in a newspaper, may be proved by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which the publication was made, but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication. **Publication of notice.**

SEC. 404. The posting up or service of any notice or other paper required by law, may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up. **Posting of papers.**

SEC. 405. Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit. **Other facts.**

SEC. 406. Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the judge of probate, and the original affidavit appended to the notice or paper, if there be one, and if not, the affidavit, by itself, is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient. **Above proof perpetuated**

SEC. 407. A copy of the field notes of any county surveyor, or a plat made by him and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation. **Field notes and plats of surveyor.**

Evidence.

SEC. 408. Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original records or papers so filed. **Certified copies evidence.**

SEC. 409. Every officer having the custody of a public record or writing, is bound to give any person on demand a certified copy thereof, on payment of the legal fees therefor. **Officer to give copies.**

Certificate of officer.

SEC. 410. The certificate of a public officer that he has made diligent and ineffectual search for a paper in his office is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

Receiver's certificate.

SEC. 411. The usual duplicate receipt of the receiver of any land office, or, if that be lost or destroyed, or beyond the reach of the party, the certificate of such receiver, that the books of his office show the sale of a tract of land to a certain individual, is proof of title equivalent to a patent against all but the holder of an actual patent.

Signature of officer.

SEC. 412. In the cases contemplated in the last three sections the signature of the officer shall be presumed to be genuine until the contrary is shown.

Judicial records.

SEC. 413. A judicial record of this territory, or of any other federal court of the United States, may be proved by the producing of the original, or by a copy thereof, certified by the clerk or the person having the legal custody thereof, authenticated by his seal of office if he have one.

Of sister states.

SEC. 414. That of a sister state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate, that the attestation is in due form of law.

Of justices of the peace

SEC. 415. The official certificate of a justice of the peace of any of the United States, to any judgment, and the preliminary proceeding before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature of his certificate is genuine, is sufficient evidence of such proceedings and judgment.

Of foreign countries.

SEC. 416. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

First. By the official attestation of the clerk or officer in whose custody such records are legally kept.

Second. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to his attestation is genuine.

Third. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

Acts of the executive.

SEC. 417. Acts of the executive of the United States, or of this territory, or of any state in the Union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments respectively, or by either branch thereof.

Legislative proceedings.

SEC. 418. The proceedings of the legislature of this territory, or any state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceedings were had, or by a copy purporting to have been printed by their order.

Statute laws.

SEC. 419. Printed copies of the statute laws of this territory, or any of the United States, or of congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this territory as presumptive evidence of such law.

Public seal.

Unwritten laws.

SEC. 420. The public seal of the territory or county affixed to a copy of a written law or other public writing, is also admissible as evidence of such law or writing respectively; the unwritten law of any other state or government may be proved as fact by parol evidence, and also by the books of reports of cases adjudged in their courts.

CHAPTER V.

PROCEEDINGS TO PERPETUATE TESTIMONY.

Evidence may be perpetuated

Petition required, and its requisites.

SEC. 421. The testimony of a witness may be perpetuated in the following manner: The applicant shall file in the office of the clerk of the district court, a petition, to be verified, in which shall be set forth, specially, the subject matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give, of such persons, as heirs, devisees, alienees or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this territory, in which such testimony will, as he believes, be material; and the obstacles preventing the immediate commencement of the action, where the applicant expects to be the plaintiff.

Order for examination

SEC. 422. The court, or judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

When court may appoint attorney to file cross-interrogatories.

SEC. 423. When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross-interrogatories to those contained therein.

Witnesses.

SEC. 424. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross-interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received, which is not responsive to some one of them.

Attorney's fees.

The attorney filing the cross-interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

Depositions, where to be filed.

SEC. 425. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed.

To be approved, and effect of the same.

SEC. 426. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party, where the witnesses are dead, or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

Applicant to pay costs.

SEC. 427. The applicant shall pay the costs of all proceedings under this chapter.

TITLE XI.

JUDGMENT.

CHAPTER I.

JUDGMENT IN GENERAL.

Judgment.

SEC. 428. A judgment is the final determination of the rights of the parties in an action.

For or against whom may be given, and what rights may be determined.

SEC. 429. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

An action may be dismissed without prejudice in certain cases.

SEC. 430. An action may be dismissed without prejudice to a future action —

First. By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court.

Second. By the court, where the plaintiff fails to appear on the trial.

Third. By the court, for want of necessary parties.

Fourth. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

Fifth. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

Set-off, etc., may be prosecuted though plaintiff dismiss his action, etc.

SEC. 431. In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action or failed to appear.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

Damages may be assessed by court or jury on judgment for failure to answer.

SEC. 432. If the taking of an account, or the proof of a fact, or the assessment of damages, be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee, master or commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

CHAPTER III.

JUDGMENT BY CONFESSION.

Defendant may appear and confess judgment.

SEC. 433. Any person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment therefor, whereupon judgment shall be entered accordingly.

Cause of action must be stated.

SEC. 434. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

Judgment is a release of errors.

SEC. 435. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors.

On confession by attorney his warrant shall be filed.

SEC. 436. Every attorney who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

Warrant of attorney to confess judgment for person in custody.

SEC. 437. If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody be present, and sign the warrant of attorney as a witness.

CHAPTER IV.

MANNER OF GIVING AND ENTERING JUDGMENT.

SEC. 438. When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

Judgment to be entered in conformity to verdict.

SEC. 439. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

Court must order entry on special verdict, etc.

SEC. 440. Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

If pleading authorize judgment, it shall be given.

SEC. 441. If a counter-claim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

May be given for defendant in cases of counter-claim and set-off.

SEC. 442. It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

Right of an infant need not be reserved in a judgment.

SEC. 443. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action.

Judgments and orders to be entered on the journal.

SEC. 444. The clerk shall make a complete record of every cause, as soon as it is finally determined, unless such record, or some part thereof, be duly waived.

Complete record to be made.

SEC. 445. He shall make up such record in each cause, in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

When to be made up and signed.

SEC. 446. The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

Of what the record must consist.

Certain papers may be abbreviated.

Further time to make record may be granted.

SEC. 447. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same.

Cases in which record need not be made.

SEC. 448. No complete record shall be made —

First. In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a *nolle prosequi* on the indictment.

Second. In cases where an action has been dismissed without prejudice to a future action.

Third. In actions in which, in open court, at the term at which the final order or judgment shall be made, both parties shall declare their agreement that no record shall be made.

May be made of an action dismissed without prejudice.

SEC. 449. In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid for making the same by the party desiring the record to be made.

SEC. 450. A complete record shall be made in the case mentioned in section four hundred and thirty-one, unless waived by the parties.

CHAPTER V.

CONVEYANCE BY COMMISSIONERS.

Conveyance by master commissioners.

SEC. 451. Real property may be conveyed by master commissioners as hereinafter provided:

First. When by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment.

Second. When specific real property is required to be sold under an order or judgment of the court.

Sheriff may act as master commissioner.

SEC. 452. A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same shall conform in all respects to the laws regulating sales of land upon execution.

Requisites of a master's deed.

SEC. 453. The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged and recorded, as the deed of a sheriff, of real property sold under execution.

TITLE XII.

CAUSES OF ACTION WHICH SURVIVE, AND ABATEMENT OF ACTIONS.

SEC. 454. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

What causes of action survive.

SEC. 455. No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office; which shall abate by the death of the defendant.

Action not to abate by death, except, etc.

TITLE XIII.

REVIVOR.

CHAPTER I.

REVIVOR OF ACTIONS.

SEC. 456. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed; the death of the party, or the cessation of his powers, being stated on the record.

Proceedings when one of two or more parties dies, etc.

SEC. 457. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of a survivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as

Same.

between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

Same.

SEC. 458. Where one of the parties to an action dies, or his powers as a personal representative cease, before the judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

Mode of reviving an action.

SEC. 459. The revivor shall be, by a conditional order of the court if made in term, or by a judge thereof if made in vacation, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

By whom motion to revive may be made.

SEC. 460. The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

If not made by consent, copy of order must be served.

SEC. 461. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time, as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

When such service may be constructive.

SEC. 462. When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them, in whose name the action may be ordered to be revived, are non-residents of the territory, or have left the same to avoid the service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for four consecutive weeks, as provided by section seventy-nine, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

When the plaintiff dies, in whose name action to be revived.

SEC. 463. Upon the death of the plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

When defendant dies, in whose name action to be revived.

SEC. 464. Upon the death of a defendant in an action, wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action, or any part thereof, survives against them.

When defendant in real action dies, against whom action to be revived.

SEC. 465. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections of this title.

Within what time to be revived against defendant.

SEC. 466. An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

Order to revive action in favor of representative of plaintiff may be made forthwith.

SEC. 467. An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

If the time has passed for reviving an action, it may be stricken from the docket.

SEC. 468. When it appears to the court by affidavit that either party to an action has been dead, or, where a party sues or is sued as a personal representative, that his powers have ceased, for a period so long that the action cannot be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

Defendant may have case stricken from docket if plaintiff fails to revive.

SEC. 469. At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days notice of the application therefor, may have an order to strike the action from the docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Action stands for trial at the term it is revived.

SEC. 470. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

CHAPTER II.

REVIVOR AND NEW PARTIES TO JUDGMENT.

How joint debtors may be made parties to judgment.

SEC. 471. When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

If either party die after judgment, revivor may be against their representatives.

SEC. 472. If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party.

Dormant judgment.

SEC. 473. If a judgment become dormant, it may be revived in the same manner as is prescribed for reviving actions before judgment.

TITLE XIV.

EXECUTIONS.

Executions, how issued.

SEC. 474. Executions shall be deemed process of the court, and shall be issued by the clerk and directed to the sheriff of the county. They may be directed to different counties at the same time.

Different kinds of executions.

SEC. 475. Executions are of three kinds:

First. Against the property of the judgment debtor.

Second. Against his person.

Third. For the delivery of the possession of real property, with damages for withholding the same, and costs.

CHAPTER I.

EXECUTIONS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

Property subject to

SEC. 476. Lands, tenements, goods and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution and sold as hereinafter provided.

levy and sale.

SEC. 477. The lands and tenements of the debtor within the county where the judgment is entered, shall be bound for the satisfaction thereof, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

When lien of judgment attaches to lands or goods.

SEC. 478. On all judgments and decrees hereafter rendered in any of the district courts in this territory, there shall be stay of execution or order of sale, as the case may be, as hereinafter provided.

Stay of execution.

SEC. 479. The order of sale on all decrees for the sale of mortgaged premises, shall be stayed for the period of one year from and after the rendition of such decree, whenever the defendant shall desire such stay, and shall, within twenty days after the rendition of such decree, file with the clerk of such court, a written request for the same: *Provided*, That if the defendant make no such request within said twenty days, the order of sale may issue immediately after the expiration thereof.

Order of sale may be stayed, how

SEC. 480. Execution on all judgments hereafter rendered in said courts, shall be stayed for the period of one year from and after the rendition thereof: *Provided*, The defendant shall within twenty days after the judgment is obtained, show to the satisfaction of the clerk of such court, that he or she is the owner of real estate in the county, of sufficient value, over and above incumbrances, to pay such judgment.

Execution stayed one year, how.

SEC. 481. On other judgments or decrees of said courts, execution or orders of sale, as the case may be, shall be stayed for the period of one year, whenever the defendant, within twenty days after the rendition thereof, shall enter into a bond to the plaintiff with one or more sufficient sureties, residents of the county, to be approved by the clerk of such court, conditioned for the payment of the amount of such judgment or decree, together with the interest and costs, and costs that may accrue.

Same.

SEC. 482. If execution shall not be sued out within five years from the date of any judgment that now is or may hereafter be rendered in any court of record in this territory, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such

When judgment becomes dormant and ceases to be a lien.

judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

The execution, its command and endorsement.

SEC. 483. The writ of execution against the property of the judgment debtor, issuing from any court of record in this territory, shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ, and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

Preference to executions.

SEC. 484. When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to endorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments on which execution issued, may have on the lands of the judgment debtor.

First delivered first satisfied.

Preferable liens saved.

Goods and chattels to be first taken on execution, and for want thereof, lands and tenements.

SEC. 485. The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor which may be liable to satisfy the judgment.

Proceedings when goods levied on are claimed by other person than defendant.

SEC. 486. If the officer, by virtue of any writ of execution issued from any court of record in this territory, shall levy the same on any goods and chattels claimed by any person other than the defendant, it shall be the duty of said officer forthwith to give notice in writing to some justice of the peace in the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace, immediately upon the receipt of such notice and schedule, to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff or any constable of the county, commanding him to summon five disinterested men, having the qualifications of electors, who shall be named in said summons, to appear before him, the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to try and determine the right of the claimant to the property in controversy. And it shall be the duty of the claimant to give two days notice in writing to the plaintiff or other party for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that the same could not be given by reason of the absence of the party, his agent or attorney.

Same.

SEC. 487. The jury summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to the evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding of the jury, for the claimant, that he recover his costs against the plaintiff in execution, or other party to the same for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant according to the finding of said jury, then the said justice shall render judgment on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Said justice of the peace, in the taxation of costs accruing by reason of such claim and trial, shall allow each juror summoned and sworn, the sum of fifty cents; and for the sheriff, constable or other officer, and witnesses, and for himself, he shall tax such fees as are allowed by law, to each respectively, for like services rendered in other cases. Such judgment for the claimant (unless an undertaking shall be executed, as provided in the next section,) shall be a justification of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels as were found to belong to such claimant.

If jury find for the claimant, plaintiff may tender

SEC. 488. If the jury shall find the property, or any part thereof, to be in the claimant, and the plaintiff in execution shall, at any time within three days after said trial, tender to the sheriff or other officer having such bond and have the property sold on execution. property in his custody on execution, an undertaking, with good and sufficient sureties, payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to claimant, and proceed to sell such property, as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

When goods levied on remain unsold, officer may take bond for their delivery. SEC. 489. In all cases where a sheriff, coroner, or other officer, shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security in such sum as he may deem sufficient, to the Condition of the bond. effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, What a breach of its condition. naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution, the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases.

What notice shall be given previous to the sale of goods on execution. SEC. 490. The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement published in some newspaper printed in the county, or in case no newspaper be printed therein, by putting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where Proceedings when goods remain unsold. the sale is to be held. And where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold unless the time and place of sale be advertised as hereinbefore provided.

Further levy and SEC. 491. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

sale, if first be insufficient.

SEC. 492. Whenever hereafter execution may be levied on any lands and tenements, the officer levying the same shall call an inquest of two disinterested freeholders, who shall be residents in the county where the lands taken on execution are situated, and administer to them an oath impartially to appraise the property so levied upon, and such officer, together with said freeholders, shall appraise said property at its real value in money, and such appraisement shall be signed by such officer and said freeholders respectively.

When property levied on, officer to call inquest of freeholders. Duties.

SEC. 493. The officer holding such appraisement shall forthwith deposit a copy thereof in the office of the clerk of the court from which the writ issued, and shall immediately advertise and sell said real estate agreeably to the provisions of this title, but in no case shall he sell any such land for less than two-thirds the appraised value thereof.

Officer shall deposit copy and advertise and sell. Land not to be sold for less than two-thirds its value.

SEC. 494. Nothing contained in this and the preceding sections of this title shall in anywise extend to affect the sale of any land by the territory, but all lands therein, the property of individuals indebted to the territory for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeably to the laws for such cases made and provided.

Not to extend to land sold by territory.

SEC. 495. In all cases where real estate may hereafter be levied upon, by virtue of any execution or order of sale, and shall have been appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the officer to cause a new appraisement of such real estate to be made, and successive executions or orders of sale may issue at any time in vacation, after the return of the officer "not sold for want of bidders," at the request of the plaintiff or his attorney.

New appraisement, when to be made.

SEC. 496. If the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of territorial, county, town or township tax, shall be levied on, for or on account of any moneys that now are or may hereafter be by them collected or received in their official capacity, the property so levied on shall be sold without valuation.

Property of delinquent officers to be sold without valuation.

What notice of sale to be given, and how.

SEC. 497. Lands and tenements, taken in execution, shall not be sold until the officer cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement in some newspaper printed in the county, or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement on the court house door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement shall be set aside on motion, by the court to which the execution is returnable.

Proceedings of officers to be examined by the court

SEC. 498. If the court, upon the return of any writ of execution, for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be statisfied that the sale has, in all respects, been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such lands and tenements; and the officer, on making such sale, may retain the purchase-money in his hands until the court shall have examined his proceedings as aforesaid, when he shall pay the same to the person entitled thereto, agreeably to the order of the court.

Confirmation and order for deed.

Sheriff to make deed for land sold on execution

SEC. 499. The sheriff or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold as the person or persons against whom such writ or writs of execution were issued could have made of the same, at the time they became liable to the judgment, or at any time thereafter.

The estate conveyed and effect of deed.

SEC. 500. The deed shall be sufficient evidence of the legality of such sale and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

How executed.

Officer may refuse to publish notice of sale unless printer's fees advanced.

SEC. 501. The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

Must demand his fees before refusal.

SEC. 502. Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, (provided either of them resides in the county,) the fees in said section specified.

Sales of lands to be at court house if there be one

SEC. 503. All sales of lands or tenements under execution shall be held at the court house, if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff or other officer making the sale of property, either personal or real, or any appraiser of such property, shall, either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Sheriff and appraisers shall not purchase.

Other executions may be issued.

SEC. 504. If lands and tenements levied on as aforesaid are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

When creditors direct separate levies to be made, how to proceed.

SEC. 505. In all cases when two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter, be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution as will bear the same proportion in value to the whole as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

Successor of sheriff may make deeds for land sold by predecessor.

SEC. 506. If the term of service of the sheriff, or other officer, who has made or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or other officer shall be absent, or be rendered unable, by death or otherwise, to make a deed of conveyance of the same, any succeeding sheriff, or other officer, on receiving a certificate from the court from which the execution issued, for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and, on tender of the purchase money, or if the same or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff or other officer who made sale had executed the same.

Balance after satisfaction of execution to be paid to defendant.

SEC. 507. If, on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer, more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution, or his legal representatives.

Reversal of judgment not to affect the title of purchaser.

SEC. 508. If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such case restitution shall be made by the judgment creditor, of the moneys for which such lands or tenements were sold, with lawful interest from the day of sale.

Judgment loses its lien if execution be not levied in one year.

SEC. 509. No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied, before the expiration of one year next after its rendition, shall operate as a lien upon the estate of any debtor, to the prejudice of any other *bona fide* judgment creditor. But in all cases where judgment has been or may be rendered in the supreme court, and a special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the next term of the district court to which such mandate may be directed. Nothing in this section contained shall be construed to defeat the lien of any judgment creditor who shall fail to take out execution and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed. In all cases where real estate has been or may hereafter be taken on execution and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisement, and order a new one to be made, or to set aside such levy and appraisement, and award a new execution to issue, as the case may require.

New appraisement, when allowed.

SEC. 510. The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

When execution returnable.

SEC. 511. In all cases where judgment is rendered in any court of record within this territory, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Judgments against principal and surety how entered

Execution in such case.

SEC. 512. Each freeholder, summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services the sum of fifty cents, for each day he may be so engaged as such appraiser, to be collected on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement. And when any free-

Appraisers' fees, etc.

holder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the precinct in which such freeholder resides, forfeit and pay the sum of fifty cents for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the county treasury for the use of the county.

For what causes sheriff or other officer may be amerced.

SEC. 513. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest, and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return, that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and ninety-eight; or shall neglect or refuse, on demand made by the defendant, his agent or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or other officer shall, on motion in court and two days notice thereof in writing, be amerced in the amount of said debt, damages and costs, with ten per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

Clerks of the courts may be amerced.

SEC. 514. If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

The amount of amercement.

SEC. 515. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

Execution issued out of the county may be returned by mail.

SEC. 516. When execution shall be issued in any county in this territory, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty if it do not reach the office in due time.

Sheriff not to send money by mail.

Notice to amerce sheriff of another county.

Amercement same as a judgment.

SEC. 517. No sheriff shall forward by mail, any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to the first day of the term at which such motion shall be made. All amercements, so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

Sureties may be made parties to such judgments.

SEC. 518. Each and every surety of any sheriff or other officer may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment, at his election.

Officer amerced, may have execution on plaintiff's judgment.

SEC. 519. In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

Property owned by married woman before marriage exempt from

SEC. 520. The property owned by a married woman before her marriage, and that which she may acquire after marriage by descent, gift, grant, devise or otherwise, and the use and profits thereof, shall be exempt from all debts and liabilities of her husband, contracted or incurred by husband's debts. him previous to their marriage or subsequently thereto, or previous to the time the wife came into the possession of such property: *Provided, however*, That all debts contracted for necessary articles for the use and benefit of the family Exception. of such married woman, shall be excepted from the operation of this section.

Homestead and other Exemptions.

Heads of families shall have five hundred dollars exempt. SEC. 521. All heads of families, who have neither lands, town lots, or houses subject to exemption as a homestead, under the laws of this territory, shall have exempt from forced sale on execution the sum of five hundred dollars in personal property.

Persons to file an inventory under oath. SEC. 522. Any person desiring to avail himself of the exemption as provided for in the preceding section, must file an inventory, under oath, in the court where the judgment is obtained, or with the officer holding the execution, of the whole of the personal property owned by him or them, at any time before the sale of the property; and it shall be the duty of the officer to whom the execution is directed, to call to his assistance three disinterested freeholders of the county where the property may be, who, after being duly sworn by said officer, shall appraise said property at its cash value.

Defendant may select. SEC. 523. Upon such inventory and appraisement being completed, the defendant in execution, or his authorized agent, may select from such inventory an amount of such property, not exceeding, according to such appraisal, the amount or value herein exempted, but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him.

SEC. 524. Nothing in this subdivision shall be considered as exempting any real or personal property from levy and sale for taxes.

Homestead exempt. SEC. 525. A homestead, consisting of any quantity of land not exceeding one hundred and sixty acres, and the dwelling house thereon and its appurtenances, to be selected by the owner thereof, and not included in any incorporated town, city or village, or, instead thereof, at the option of the owner, a quantity of contiguous land, not exceeding in amount two lots, being within an incorporated town, city or village, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of the territory, being the head of a family, shall not be subject to attachment, levy or sale, upon execution or any other process issuing out of any court within this territory, so long as the same shall be owned and occupied by the debtor as such homestead. This section shall be deemed and construed to exempt such homestead in the manner aforesaid during the time it shall be occupied by any one or more of the family of the debtor, or by the widow or minor child or children of any deceased person who was, when living, entitled to the benefit of this subdivision: *Provided*, That the homestead mansion and twenty acres of the land whereon the mansion is situate, and land adjoining the same to the extent of five hundred dollars in value, all being without an incorporated town, city or village, shall be exempted, and no more.

Householder may notify officer of what he regards as his homestead.

SEC. 526. Whenever a levy shall be made upon the lands or tenements of a householder being the head of a family, whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer, at the time of making the levy, of what he regards as his homestead, with a description thereof within the limits above prescribed, and the remainder alone shall be subject to sale under such levy.

If plaintiff dissatisfied, officer shall cause survey

SEC. 527. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making the levy shall cause the same to be surveyed, and the excess over twenty acres to be appraised in the same manner provided by the general laws regulating appraisements, beginning the survey at a point to be designated by the owner, and set off, in a compact form, including the dwelling house and its appurtenances, the amount specified in section five hundred and twenty-five, and the expense of such survey and appraisement, shall be chargeable on the execution and collected thereupon.

After survey, officer to sell.

SEC. 528. After the survey shall have been made, the officer making the levy may sell the property levied upon and not included in the portion thus assigned, in the same manner as provided in other cases for the sale of real estate on execution; and in giving a deed of the same he may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as aforesaid.

SEC. 529. Nothing in this subdivision shall be considered as exempting any real estate from taxation or sale for taxes.

Personal property exempt.

SEC. 530. No property hereinafter mentioned shall be liable to attachment, execution or sale on any final process issued from any court in this territory, against any person being a resident of this territory and the head of a family:

First. The family Bible.

Second. Family pictures, school books and library for use of the family.

Third. A seat or pew in any house or place of public worship.

Fourth. A lot in any burial ground.

Fifth. All necessary wearing apparel of the debtor and his family. All beds, bedsteads and bedding necessary for the use of such family. All stoves and appendages put up or kept for the use of the debtor and his family, not to exceed four. All cooking utensils, and all other household furniture not herein enumerated, to be selected by the debtor, not exceeding in value one hundred dollars.

Sixth. One cow, three hogs, and all pigs under six months old, and if the debtor be at the time actually engaged in the business of agriculture, in addition to the above, one yoke of oxen, or a pair of horses in lieu thereof; ten sheep, and the wool therefrom, either in the raw material or manufactured into yarn or cloth; the necessary food for the stock mentioned in this section, for the period of three months; one wagon, cart or dray, two plows and one drag; the necessary gearing for the team herein exempted, and other farming implements not exceeding fifty dollars in value.

Seventh. The provisions for the debtor and his family necessary for six months' support, either provided or growing, or both, and fuel necessary for six months.

Eighth. The tools and instruments of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business. The library and implements of any professional man.

All of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, clerk or legal representative, as the case may be.

Exceptions as to laborers, etc.

SEC. 531. Nothing in this chapter shall be so construed as to exempt any property in this territory from execution or attachment for clerks', laborers', or mechanics' wages.

CHAPTER II.

PROCEEDINGS IN AID OF EXECUTION.

When judgment creditor has not personal property, interest in joint stock company

SEC. 532. Where a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge, or other joint stock company, or any interest he may have in any money, contracts, claims or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods or effects which he may have in possession of any person, body politic or corporate, shall be subject to the payment of such judgment by proceedings in equity, or as in this chapter prescribed.

shall be subject to payment of debts.

When execution is returned unsatisfied, order for discovery of property allowed.

Sec. 533. When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where he resides, or, if he do not reside in the territory, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a probate judge or a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or a referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

Same.

SEC. 534. After the issuing of an execution against property, and upon proof by affidavit of the judgment creditor or otherwise, to the satisfaction of the district court, or a judge thereof, or a probate judge of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment creditor to appear at a time and place in said county to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

Warrant may issue for arrest of the debtor.

SEC. 535. Instead of the order requiring the attendance of the judgement debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party, or otherwise, that there is danger of the debtor leaving the territory or concealing himself to avoid the examination herein mentioned, issue a warrant, requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a probate judge, or a judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the territory, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking, in such sum as the

His examination.

Undertaking by debtor.

judge may prescribe, with one or more sureties, that he will from time to time attend for examination before the judge or referee, as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

Tendency to convict of fraud will not excuse.

SEC. 536. No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

Any debtor may pay execution against his creditor.

SEC. 537. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

Examination of debtors of judgment debtor or of those having property belonging to him.

SEC. 538. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear, at a specified time and place, within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

Proceedings in such case.

SEC. 539. Witnesses may be required, upon the order of the judge, or by a subpœna issued by the clerk of the district court, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

Same.

SEC. 540. The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge. If before a referee, the examination must be taken by the referee and certified by the judge. All examinations and answers before a judge or referee, under this chapter, must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

Same.

SEC. 541. The judge may order any property of the judgment debtor, not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, where it is made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Same.

SEC. 542. The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner and with the like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

Undertaking by receiver.

SEC. 543. If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such receiver; if any other person shall be appointed receiver, he shall give a written undertaking, in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge his duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section shall be to the territory of Nebraska, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

Oath.

Proceedings may be continued.

SEC. 544. The judge or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time until they are completed.

Reference by judge.

SEC. 545. The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence of the facts.

Disobedience of order, how punished.

SEC. 546. If any person, party or witness disobey an order of the judge or referee, duly served, such person, party or witness may be punished by the judge as for contempt.

Orders to be reduced to writing and filed with the clerk.

SEC. 547. The orders to judgment debtors and witnesses, provided for in this chapter, shall be in writing and signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same.

Compensation and costs.

SEC. 548. The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same.

Compensation of probate judge. SEC. 549. The probate judge shall be allowed for his services, under this chapter, the sum of three dollars in each case, and such fees as are allowed by law to clerks of the district court for similar services.

CHAPTER III.

EXECUTIONS AGAINST THE PERSON.

Its command, etc. SEC. 550. An execution against the person of a judgment debtor, shall require the officer to arrest such debtor and commit him to the jail of the county until he pay the judgment or be discharged according to law.

For what cause issued. SEC. 551. An execution against the person of the debtor may be issued upon any judgment for the payment of money —

First. When the judgment debtor has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment.

Second. When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals with the like intent.

Third. When he has assigned or disposed of all or any part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution.

Fourth. When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered.

Fifth. When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made.

By whom and how allowed. SEC. 552. An execution against the person of the debtor can be issued only when the same is allowed by the supreme court, district court, or probate court, or any judge of either, upon being satisfied, by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned in the last preceding section.

May be issued by a justice of the peace. SEC. 553. A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by the like affidavit and evidence.

When issued of course.

SEC. 554. In all cases in which the judgment debtor was arrested before judgment, and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

Discharge from arrest by delivery of property.

SEC. 555. Any person taken in execution as aforesaid, shall be discharged by delivering or setting off to the officer serving the same, if issued from a court of record, real or personal property, if issued from a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ issued.

Death of debtor no satisfaction of judgment

SEC. 556. The death of a person under arrest in an action does not satisfy the judgment, but an execution may issue thereon, as if the arrest had been made.

When debtor discharged.

SEC. 557. If a person imprisoned under an order of arrest made before judgment, is not charged in execution within ten days after judgment, he shall be discharged from such imprisonment.

Discharged if unable to perform the act or endure imprisonment.

SEC. 558. In cases of commitment under this chapter, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his inability to perform the act or endure the imprisonment, may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof in which the judgment was or might be rendered, on such terms as may be just.

CHAPTER IV.

EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

Its command, etc.

SEC. 559. If the execution be for the delivery of the possession of real property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements, and in this respect it shall be deemed an execution against the property.

When enforced by attachment.

SEC. 560. When the judgment is not for the recovery of money or real property, the same may be enforced by attachment by the court rendering the judgment, upon motion made, or by a rule of the court upon the defendant;

but in either case, notice of the motion, or a service of a copy of the rule, shall be made on the defendant a reasonable time before the order of attachment is made.

CHAPTER V.

JUDGMENT BEFORE JUSTICES OF THE PEACE.

Docketing transcripts in district court for an execution.

SEC. 561. In all cases in which judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a transcript of such judgment in the office of the clerk of the district court of the county in which the judgment was rendered, and thereupon the clerk shall, on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment and the time of filing the transcript.

When to operate as a lien on lands

SEC. 562. Such judgment, if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor from the day of the filing; if filed in vacation, as against the judgment debtor said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors from the first day of the next succeeding term, in the same manner and to the same extent as if the judgment had been rendered in the district court.

Execution thereon.

SEC. 563. Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same, as other executions; and in case of sale of real estate, his proceedings shall be examined and approved by the court, as in other cases.

Certificate on transcript

SEC. 564. The justice of the peace shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same, and the entry of the case on the execution docket, shall be paid by the party filing the same, and not be taxed to the other party.

Who pays costs of filing.

TITLE XV.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

OFFER TO COMPROMISE.

Effect of, if made before trial.

SEC. 565. The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff, or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit; and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

The offer no cause for continuance

SEC. 566. The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of a trial.

CHAPTER II.

SUBMITTING A CONTROVERSY.

Parties may submit a controversy to the court without action.

SEC. 567. Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction, if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon hear and determine the case and render judgment, as if an action were pending.

Record. SEC. 568. The case, the submission and the judgment shall constitute the record.

The judgment and reversal. SEC. 569. The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

CHAPTER III.

OFFER TO CONFESS JUDGMENT.

Effect if made after action brought. SEC. 570. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial, do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Before action brought, defendant may offer to confess judgment. SEC. 571. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

CHAPTER IV.

MOTIONS AND ORDERS.

SEC. 572. A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein. A motion.

SEC. 573. Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made. May include several objects.

SEC. 574. Where notice of a motion is required, it must be in writing, and shall state the names of the parties to the action or proceeding in which it is to be made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing. Notice of a motion.

SEC. 575. Notices of motions mentioned in this chapter may be served by a sheriff, coroner or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney. How motion served.

SEC. 576. The service of a notice shall be made, as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees. Same.

SEC. 577. Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct. Same.

SEC. 578. Every direction of a court or judge, made or entered in writing and not included in a judgment, is an order. An order.

SEC. 579. Orders made out of court, shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term. To be entered on journal.

TITLE XVI.

ERROR IN CIVIL CASES.

CHAPTER I.

PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS AND ORDERS IN COURTS OF APPELLATE JURISDICTION.

What judgment or order may be reversed, etc., in district court.

SEC. 580. A judgment rendered, or final order made, by a probate court, justice of the peace or any other tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.

What is a final order.

SEC. 581. An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified or reversed, as provided in this title.

Reversal by supreme court.

SEC. 582. A judgment rendered or final order made by the district court, may be reversed, vacated or modified by the supreme court, for errors appearing on the record.

Same.

SEC. 583. A judgment rendered or final order made by any court, board or tribunal, mentioned in the preceding sections, may be reversed, vacated or modified by the supreme court, for errors appearing on the record; but the petition in error, in such case, can be filed only by leave of the supreme court, or a judge thereof.

Petition in error only on leave.

Proceedings to obtain reversal or modification

SEC. 584. The proceedings to obtain such reversal, vacation or modification, shall be by petition, to be entitled, "petition in error," filed in a court having power to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at the term.

Same.

SEC. 585. The summons mentioned in the last section, shall, upon the written precipe of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

Issuing and service of summons may be waived.

Transcript to be filed with petition.

SEC. 586. The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified.

By whom and when transcript to be furnished.

SEC. 587. Judges of probate courts, justices of the peace, and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

When proceedings in error shall stay execution.

SEC. 588. No proceeding to reverse, vacate or modify any judgment or final order rendered in the probate court, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of said judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows:

Plaintiff's undertaking in such cases.

First. When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs, in case the judgment or final order shall be affirmed in whole or in part.

Second. When it directs the execution of a conveyance or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this territory or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs.

Third. When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this territory, or any judge thereof, to the effect that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs.

Fourth. When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed.

Substitute for such undertaking

SEC. 589. Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which the judgment was rendered or order made, to abide the judgment of the appellate court.

Undertaking to be approved.

SEC. 590. Before the written undertaking herein mentioned in section five hundred and eighty-eight, shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties, must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall endorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

Execution on judgment by giving security to make restitution, etc.

SEC. 591. In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned to stay proceedings, if the defendant in error give adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

When proceedings in error must be commenced.

SEC. 592. No proceeding for reversing, vacating or modifying judgments or final orders, shall be commenced unless within three years after the rendition of the judgment, or making the final order complained of; or, in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years as aforesaid, exclusive of the time of such disability.

Stay of execution on judgment of justice of the peace.

SEC. 593. No proceedings to reverse, vacate or modify any judgment rendered or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. The person entitled to such proceedings shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the said judgment has been paid off or satisfied prior to the commencement of such proceedings.

Proceedings on reversal or modification of judgment or order.

SEC. 594. When a judgment or final order shall be reversed, either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and such court to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment or final order had been rendered therein. And on motion, and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court.

Mandate.

Costs in error.

SEC. 595. When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

Penalty against plaintiff on affirmance of judgment.

SEC. 596. When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes, that there was reasonable ground for the proceedings in error.

Misprision of the clerk not ground of reversal.

SEC. 597. A mistake, neglect or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission occurred.

Rendering judgment prematurely a clerical error.

SEC. 598. Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical error.

Writs of error abolished.

SEC. 599. Writs of error and certiorari to reverse, vacate or modify judgments or final orders in civil cases, are abolished, but courts shall have the same power to compel complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and certiorari.

Proceedings when judgment of justice is affirmed.

SEC. 600. If the judgment of a justice of the peace, taken on error as herein provided to the district court, be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the district court.

Proceedings when judgment of justice is reversed.

SEC. 601. When the proceedings of a justice of the peace are taken on error, to the district court, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment, as in cases of appeal.

CHAPTER II.

PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS AND ORDERS IN THE COURTS IN WHICH THEY ARE RENDERED.

District court may vacate or modify judgment after the expiration of term.

SEC. 602. A district court shall have power to vacate or modify its own judgments or orders, after the term at which such judgment or order was made:—

First. By granting a new trial of the cause, within the time and in the manner prescribed in section three hundred and eighteen.

Second. By a new trial granted in proceedings against defendants constructively summoned, as provided in section seventy-seven.

Third. For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

Fourth. For fraud practiced by the successful party in obtaining the judgment or order.

Fifth. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

Sixth. For the death of one of the parties before the judgment in the action.

Seventh. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending.

Eighth. For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred and forty-two.

Ninth. For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

Mode of proceeding. SEC. 603. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of the last preceding section, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action: *Provided*, Such summons shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party or his attorney, unless the court, or a judge thereof, shall endorse upon the petition permission to issue such summons.

Same. SEC. 604. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

Same. SEC. 605. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action.

Same. SEC. 606. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

Effect on liens, etc.

Injunction in such cases.

SEC. 607. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

Same.

SEC. 608. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

Within what period the proceedings under section 602 may be commenced.

SEC. 609. Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivisions four, five and seven of section six hundred and two, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine within one year, after the defendant has notice of the judgment.

The provisions of this title apply to the supreme and court and probate courts.

SEC. 610. The provisions of this title subsequent to section six hundred and one, shall apply to the supreme court and probate court, so far as the same may be applicable to the judgments or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings; and in estimating time, the probate court shall, for this purpose, be considered as holding, in each year, three terms of four months each, the first commencing on the first day of January of each year.

Cases pending in appellate courts, liens, etc.

SEC. 611. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

TITLE XVII.

COSTS.

SEC. 612. In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by endorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtain judgment or not. Non-resident plaintiffs to give security for costs.

SEC. 613. An action in which security for costs is required by the last section, and has not been given, shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given. Effect of not giving.

SEC. 614. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections. If plaintiff becomes a non-resident after action brought.

SEC. 615. In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this territory, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by the plaintiff. When additional security must be given.

SEC. 616. After final judgment has been rendered in an action in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged Proceedings against surety for costs.

against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

When an informer under a penal statute shall pay costs.

SEC. 617. If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution, unless he be an officer whose duty it is to commence the same.

Costs on disclaimer.

SEC. 618. Where defendants disclaim having any title or interest in land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.

Costs on motion and amendments.

SEC. 619. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court in its discretion may direct.

When allowed of course to plaintiff.

SEC. 620. Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

When plaintiff shall not recover.

SEC. 621. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs; and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

When plaintiff shall pay.

SEC. 622. Costs shall be allowed of course to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

When under control of the court.

SEC. 623. In other actions the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Who to pay when several actions against parties to the same instrument.

SEC. 624. Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section forty-four, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the territory.

SEC. 625. When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees as if the summons had issued in the county of which he is sheriff.

Fees on summons issued out of the county.

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TITLE XVIII.

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS CONCERNING REAL PROPERTY.

SEC. 626. In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition that he has a legal estate therein, and is entitled to the possession thereof, describing the same, as required by section one hundred and thirty-three, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

The petition generally.

SEC. 627. It shall be sufficient in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he witholds possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defense is made.

The answer.

SEC. 628. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state, in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right, or did some act amounting to such denial.

The petition by a tenant in common against a co-tenant.

SEC. 629. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for witholding the property.

The recovery where right terminates during pendency of the action.

SEC. 630. In an action for the recovery of real proper-

New trial of course.

ty, the party against whom judgment is rendered, may, at any time during the term at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

No further trial except, etc. SEC. 631. No further trial can be had in such action, except upon appeal, unless for good cause shown as in other actions.

Occupying claimant's rights. SEC. 632. The parties in an action for the recovery of property, may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

Liability of party committing waste. SEC. 633. If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor.

Forfeiture and conviction. SEC. 634. Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

Who deemed to have committed waste. SEC. 635. Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

Liability of trespassers. SEC. 636. For willful trespass, injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard or town lot, or on the public grounds of any town, or any land held by this territory for any purpose whatever, the trespasser shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

Exception. SEC. 637. Nothing herein contained authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge in its immediate neighborhood.

Owner in remainder may have action, etc. SEC. 638. The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

Action by an heir. SEC. 639. An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestors as well as in his own time, unless barred by the statute of limitations.

By a purchaser SEC. 640. Where lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase. on execution.

SEC. 641. This provision is not intended to prevent the person who occupies the lands, in the meantime, from using them in the ordinary course of husbandry, or from using timber for the purpose of making suitable repairs thereon. Qualification.

SEC. 642. But if for this purpose he employ timber vastly superior to that required for the occasion, he will be deemed to have committed waste, and will be liable accordingly. Use of timber superior to occasion, subject to penalty.

CHAPTER II.

ACTIONS ON OFFICIAL SECURITIES.

SEC. 643. When an officer, executor or administrator within this territory, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer, executor or administrator, and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof. The plaintiff in such actions. Copy of bond.

SEC. 644. A judgment in favor of a party for one delinquency, does not preclude the same or another party from an action on the same security for another delinquency. Further actions.

CHAPTER III.

PROCEEDINGS UPON MANDAMUS.

SEC. 645. The writ of mandamus may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion. To whom and for what issued.

SEC. 646. This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary In what cases not to issue.

course of the law. It may issue on the information of the party beneficially interested.

Writ, alternative or peremptory. SEC. 647. The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

When peremptory. SEC. 648. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must be first issued.

Motion therefor. SEC. 649. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

How allowed and served. SEC. 650. The allowance of the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for a contempt.

The answer. SEC. 651. On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition in a civil action.

Proceedings, if no answer. SEC. 652. If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing new matter, the same shall not in any respect conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

No pleadings but writ and answer. SEC. 653. No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action. Trial.

Judgment for plaintiff.

SEC. 654. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

Its effect.

SEC. 655. A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

When a fine may be imposed.

SEC. 656. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer, or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

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TITLE XIX.

JURIES.

Persons competent to serve on juries.

SEC. 657. All free white males residing in any of the counties of this territory, having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense, punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and

Exceptions.

petit juries, within their counties respectively: *Provided*, That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practicing physicians, postmasters, and carriers of the United States mails, shall not be compelled to serve as jurors.

Commissioners to meet and select jury, and furnish list.

SEC. 658. In each of the counties of this territory, wherein a district court is appointed or directed to be holden, the county commissioners of the county shall, at least fifteen days before the first day of the session of the court, meet together, or any two of them may meet, and select sixty persons possessing the qualifications prescribed in section six hundred and fifty-eight, and as nearly as may be, a proportionate number from each precinct in the county, and shall, within five days thereafter, furnish to the clerk of the district court of the county, or his deputy, a list of the names of the persons selected.

Copy furnished to clerk of district court.

Clerk to write names on separate tickets, and preserve list.

SEC. 659. The clerk or deputy clerk receiving the names, shall write the name of each person selected on a separate ticket, and place the whole number of tickets into a box, or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners, in the files of his office.

Sheriff, etc., shall draw, by lot, names for grand and petit jurors.

SEC. 660. The clerk of the district court or his deputy, and the sheriff, or if there is no sheriff, the deputy sheriff, or if there is no deputy sheriff, the coroner of the county, shall, at least ten days before the first day of the session of the district court, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, sixteen names, and the persons whose names are drawn shall be grand jurors; and the clerk and sheriff shall then draw twenty-four additional names, and the persons whose names are drawn shall be the petit jurors.

Juries how and by whom summoned.

SEC. 661. The clerk shall, on the day of the drawing aforementioned, issue an order to the sheriff, deputy sheriff, or coroner, as the case may be, commanding him to summon the persons whose names are drawn, to appear before the district court, at or before the hour of eleven o'clock, on the morning of the first day of the term (stating in the order, the day of the week and month, and the place of the sitting of the court), to serve as grand jurors, and a like order commanding the sheriff, deputy sheriff or coroner to summon the petit jurors.

Sheriff to serve copy of command

SEC. 662. The sheriff, deputy sheriff or coroner having received the order, shall, at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as grand juror, a true copy of the command, except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror; and the sheriff, deputy sheriff or coroner, shall, at least five days before the first day of the session of the court, in like manner summon each person whose name was selected and drawn as petit juror; and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving the copy at his residence.

SEC. 663. Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court.

SEC. 664. Whenever the proper officers fail to summon a grand or petit jury, or when all the persons summoned as grand or petit jurors do not appear before the district courts, or whenever at any general or special term, or at any period of a term for any cause there is no panel of grand jurors or petit jurors, or the panel is not complete, said court may order the sheriff, deputy sheriff or coroner, to summon without delay, good and lawful men, having the qualifications of jurors, and each person summoned shall forthwith appear before the court, and if competent, shall serve on the grand jury or petit jury, as the case may be, unless such person may be excused from serving, or lawfully challenged.

Jurors shall appear, and not depart without leave.

Other jurors, when and how summoned.

SEC. 665. It shall be the duty of the county commissioners, in selecting and furnishing to the clerk the names of persons qualified to serve as grand or petit jurors, so to select and arrange that no one person shall serve on the jury a second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained.

No one person shall serve on a jury a second time.

SEC. 666. The sheriff, deputy sheriff or coroner, having received the order or service issued by the clerk, shall make return thereof with his proceedings, to the clerk, before the session of the court.

SEC. 667. If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five dollars nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail; and if the county commissioners in any county neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five dollars nor more than

Sheriff, etc., to make returns.

Penalty if juror fails to appear.

fifty dollars; and if any clerk of the district court, or deputy clerk or sheriff, deputy sheriff or coroner, neglects or fails to perform the duties imposed by this chapter, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five dollars nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

Penalty for packing a jury.

SEC. 668. If a sheriff or other officer, corruptly or through favor or ill will, summon a juror, with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motives, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this territory.

TITLE XX.

CONTEMPTS.

Power of court to punish in certain cases.

SEC. 669. Every court of record shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts:

First. Disorderly, contemptuous or insolent behavior towards the court, or any of its officers, in its presence.

Second. Any breach of the peace, noise, or other disturbance tending to interrupt its proceedings.

Third. Willful disobedience of, or resistance willfully offered to any lawful process or order of said courts.

Fourth. Any willful attempt to obstruct the proceedings, or hinder the due administration of justice in any suit, proceedings or process pending before the courts.

Fifth. The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, and, when sworn or affirmed, the refusal to answer any legal and proper interrogatory.

Persons guilty of contempt, how punished.

SEC. 670. Contempts committed in the presence of the court may be punished summarily; in other cases the party upon being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defense.

SEC. 671. Persons punished for contempt under the preceding provisions, shall nevertheless be liable to indictment, if such contempt shall amount to an indictable offense; but the court before which the conviction shall be had, may, in determining the punishment, take into consideration the punishment before inflicted, in mitigation of the sentence.

Persons punished for contempt liable to indictment.

SEC. 672. A justice may punish, as for contempt, persons guilty of the following acts, and no others:

Punishable acts.

First. Disorderly, contemptuous and insolent behavior towards the justice, tending to interrupt the due course of trial or other judicial proceedings before him.

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Willful resistance, in the presence of the justice, to the execution of a lawful order or process made or issued by him.

SEC. 673. A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, where an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him, or may convict him for the offense, and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.

Penalty

SEC. 674. The conviction, specifying particularly the offense and the judgment thereon, must be entered in his docket. A warrant of commitment to the jail of the county until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable or sheriff to whom it may be given, and by the jailer of the county.

Warrant of commitment.

TITLE XXI.

APPEALS FROM THE DISTRICT TO THE SUPREME COURT.

SEC. 675. Appeals hereafter to be tried must be taken within one month from the time judgment is rendered, by service of notice in writing on the adverse party, his agent

Within what time.

or attorney, and also on the clerk of the court in which the proceedings were had, stating the appeal from the same or some specific part thereof.

Transcript. SEC. 676. Upon receiving the notice and the payment of the legal fees therefor, by the appellant, the clerk shall forthwith transmit to the supreme court a transcript of the record in the cause, or so much thereof as the appellant directs, to which shall be appended the notice of the appeal and the written directions of the appellant applying therefor.

What constitutes the record. SEC. 677. All proper entries made by the clerk, and all papers pertaining to the cause and filed therein, (except subpœnas, depositions, and other papers that are used as mere evidence,) are to be deemed parts of the record. But the transcript of motions, affidavits and other papers, when they relate to collateral matters, should not be certified, unless by the direction of the appellant. If so certified, when not material to the determination of the appeal, the court may direct the person blamable therewith to pay the costs thereof.

Party appealing. SEC. 678. If the other co-parties refuse to join, they are precluded from any benefits arising from the appeal, unless from the necessity of the case; but should they fail to appear, and refuse to join in the appeal, they shall be liable for their share of the costs already made, only.

Death no abatement. SEC. 679. The death of any or all the parties shall not abate the suit, but the names of the proper persons being substituted, the cause may proceed; but to promote the ends of justice, the court may grant a continuance in such cases.

Stay of execution. SEC. 680. An appeal from the judgment of the court shall be a stay of execution, except to any portion of the judgment not appealed from.

Execution recalled. SEC. 681. If execution has been issued before such appeal is taken, the clerk shall recall it.

Property delivered up. SEC. 682. Property levied upon and not sold at the time of such recall, shall be returned forthwith by the sheriff to the judgment debtor.

Judgment of supreme court. SEC. 683. The court may reverse or affirm the judgment, or render such judgment as the district court should have done.

Damages. SEC. 684. If the judgment be affirmed, the court shall award the appellee such damages as they may deem just, not exceeding twelve per cent. per annum.

Remanding cause. SEC. 685. If the court affirm the judgment, it may remand the cause to the district court to be carried into effect, or it may issue the necessary process for that purpose to the sheriff of the proper county.

SEC. 686. If by the determination of the cause, the appellant is entitled to a restoration of money or property that was taken from him under the judgment below, then either court may award a writ of restoration or execution for the purpose of restoring the property or the value thereof. Writ of restitution.

SEC. 687. Property acquired by a *bona fide* purchaser under a judgment reversed, shall not be affected by such reversal. Purchasers.

SEC. 688. Where judgment is rendered against the appellant, the court shall on motion render judgment against both appellant and his sureties for the amount of the judgment, damages and costs, in case such damages can be ascertained by the court without trial. Damages.

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TITLE XXII.

BOATS.

SEC. 689. Any boat found in the waters of this territory is liable — Boats when liable.

First. For all debts contracted by the master, owner, agent, clerk or consignee, on account of supplies furnished for the use of such boat; or on account of work done or services rendered for such boat; or on account of work done or materials furnished in building, repairing, fitting out, furnishing or equipping such boat.

Second. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of persons or property entered into by the master, owner, agent, clerk or consignee thereof.

Third. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of said boat.

SEC. 690. Claims growing out of any of the above causes are liens upon the boat, its apparel, tackle, furniture, and appendages, including barges and lighters, if owned by the owners of the boat and used therewith at the time the suit is commenced. Liens.

SEC. 691. Such liens take preference of any claims against the boat itself, or any or all of its owners, growing out of any other causes than those above enumerated, and between themselves they are to be preferred in the following order: Order of liens.

First. Those resulting from wages for services rendered on board of such boat within the year then past: *Provided*, Suit be commenced within twenty days after the cessation of such labor.

Second. Those resulting from contracts made within this territory.

Third. All other causes.

Limitation. SEC. 692. Actions against boats under the provisions of this title cannot be brought after the lapse of one year from the time the cause of action accrued.

Lien attaches. SEC. 693. The lien attaches from the commencement of the suit, subject only to such other liens as are of a preferred class.

Petition; warrant. SEC. 694. The original petition must be in writing, sworn to and filed with the clerk, or justice of the peace, who shall thereupon issue a warrant to the proper officer, commanding him to seize the boat. The warrant shall be served according to the directions it contains.

Notice. SEC. 695. The usual notice shall also be issued, directed to the boat by name, and served upon the master, owner, agent, clerk or consignee thereof, and if none of them be found, it may be served by posting up a copy in some conspicuous part of the boat. The warrant shall be served according to the directions it contains.

Appearance. SEC. 696. Any person interested in the boat may appear for the defendant, by himself, his agent or attorney, and conduct the defense of the suit, and no continuance shall be granted to the plaintiff while the boat is held in custody.

Boat, how released. SEC. 697. The boat may be discharged at any time before final judgment, by the giving of a bond with sureties, to be approved by the officer serving the warrant, or by the clerk or justice who issued it, in a penalty double the plaintiff's demand, conditioned that the obligor therein will pay the amount which may be found due to the plaintiff, together with costs.

Execution. SEC. 698. If judgment be rendered for the plaintiff before the boat is thus discharged, a special execution shall be issued against it. If it have been previously discharged, the execution shall issue against the principal and sureties in the bond, without further proceedings.

Sheriff's sale. SEC. 699. The sheriff may sell any of the furniture or appendages of the boat to satisfy the demand. If he sell the boat itself he must sell it to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat desire a different and equally convenient mode of sale.

SEC. 700. If a fractional share of the boat be thus sold, the purchaser shall hold such share or interest jointly with the other owners. Purchaser.

SEC. 701. If an appeal be taken by the defendant before the boat is discharged as above provided, the appeal bond, if one be filed, will have the same effect in discharging the boat as the bond above contemplated, and execution shall issue against the obligor therein after judgment in the same manner. Appeal bond

SEC. 702. Nothing herein contained is intended to affect the right of a plaintiff to sue in the same manner as though the provisions of this title had not been enacted. Cumulative.

SEC. 703. In actions commenced in accordance with the provisions of this title, it is sufficient to allege the contract to have been made with the boat itself. Complaint.

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TITLE XXIII.

INFORMATIONS.

SEC. 704. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this territory, or any office in any corporation created by the laws of this territory, or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this territory without being authorized by law, or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law. When to be filed.

SEC. 705. Such information may be filed by the prosecuting attorney of the proper county whenever he deems it his duty so to do. By whom.

SEC. 706. He must file such information when directed to do so by the governor, the legislative assembly, or the district court.

SEC. 707. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original petition. Statement.

SEC. 708. Such statement shall be filed in the clerk's office, and summons issued and served in the same manner Filed.

as hereinbefore provided for the commencement of actions in the district court.

Answer. SEC. 709. The defendant shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner.

Contesting claimant. SEC. 710. When the defendant is holding an office to which another is claiming the right, the information should set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties.

Judgment. SEC. 711. If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

Same. SEC. 712. The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office.

Damages. SEC. 713. When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter, bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

Several claimants. SEC. 714. When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any portion thereof in order to try their respective rights thereto.

Judgment of ouster. SEC. 715. If the defendant be found guilty of unlawfully holding or exercising any office, franchise or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise or privilege, and also that he pay the costs of the proceeding.

If defendant found to have exercised only individual powers, what judgment. SEC. 716. If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

On private relation. SEC. 717. When an information is upon the relation of a private individual, it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

Costs. SEC. 718. In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

SEC. 719. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders. **Trustees.**

SEC. 720. Such trustees shall enter into bond, in such a penalty and with such security as the court may approve, conditioned for the faithful discharge of their trust. **Bond of trustees.**

SEC. 721. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties. **Suit on bond, by whom brought.**

SEC. 722. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled. **Their duties**

SEC. 723. The court shall, upon an application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books or papers of the corporation in any wise necessary for the settlement of its affairs, to deliver up the same to the trustees. **Books and papers.**

SEC. 724. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory of all the effects, rights and credits, which come to their possession or knowledge, the truth of which inventory shall be sworn to. **Inventory.**

SEC. 725. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come to their hands, in the same manner as though they were the executors of a deceased person. **Act same as executors.**

SEC. 726. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby. **Officers liable.**

SEC. 727. Any person who, without good reason, refuses to obey any order of the court as herein provided, shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars and imprisoned in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order. **Punishment for disobedience of order.**

SEC. 728. A proceeding of this kind may be instituted in the manner above contemplated, for the purpose of annulling or vacating any letters patent granted by the proper authorities of this territory, where there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee, or **Patent annulled.**

those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same.

TITLE XXIV.

CHANCERY.

Actions, how commenced.

SEC. 729. All actions in chancery shall be commenced by filing in the office of the register of the proper court a bill of complaint, setting forth the nature of the complaint agreeably to the usages and practice of courts of equity, and causing a subpœna to be issued thereon, except as hereinafter provided for service on non-residents.

The subpœna; to whom directed; contents.

SEC. 730. The subpœna shall be issued and signed by the register of the said court, under the seal thereof, dated on the day it is issued; it shall run in the name of the territory of Nebraska, and shall be directed to the defendant or defendants named in the bill, requiring him or them to appear and answer the said bill on or before the day therein named, as hereinafter provided. If one or more defendants reside in any other county of this territory than that in which the action is rightly brought, then, on request of the complainant or complainants, subpœna may be issued as aforesaid against such defendant or defendants to such county. The subpœna may be served by the sheriff or coroner of the county in which the defendant or defendants to be sued reside, and if there be no sheriff or coroner in such county, then by such person as the register shall designate: *Provided*, That whenever any subpœna shall be served by a person designated by such register, the person making such service shall verify the same by his own affidavit.

By whom served.

When served, to be verified.

Return of subpœna.

SEC. 731. The subpœna shall be made returnable on the second Monday after the day of its date, except when issued to any other county than that in which the action is brought. It may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date, and shall require the defendant or defendants therein named to appear and answer the bill on the third Monday after the date of the return thereof, and the day of the month on which the defendant is required to answer the bill shall be inserted in the subpœna.

Service of subpœna. SEC. 732. Service of subpœna shall be made by delivering a certified copy thereof to each defendant personally, or by leaving one at his usual place of residence, at any time before the return day. **Return, what to state.** The return must state the time and manner of service, and the officer or person serving the subpœna must make his return at the time therein stated. If the subpœna shall not be returned served on the defendant or defendants, or on any one or more of them, on the return day thereof, the register shall, if required, issue *alias* or *pluries* subpœna against such defendant or defendants, as the case may be. **Alias or pluries subpœna.**

Service against corporations, upon whom and how made. SEC. 733. In actions against corporations, service may be made upon the president, mayor, chairman of the board of managers, directors or trustees, or other chief officer, or if its chief officer is not found in the county, then upon its secretary, cashier, clerk or managing agent, or if none of the aforesaid officers can be found, then by copy left at the office or the usual place of business of such corporation; and service of subpœna and return thereof shall be made at the time and in the manner provided in the last preceding section.

Service by publication. SEC. 734. If it shall be shown by the bill properly sworn to, or by affidavit filed in the office of the register, that the action relates to, or the subject thereof is, real estate or personal property in this territory, or that the defendant or defendants has or have claims in interest, actual or contingent, therein, or that the relief sought consists wholly or partially in excluding him or them from any interest therein, and that such defendant or defendants is or are non-residents of, and service of subpœna cannot be made upon him or them in, this territory, then, service on such defendant or defendants who are non-resident, may, without issuance of subpœna, be made by publication of notice four consecutive weeks in some newspaper regularly printed in the county in which the action is brought, and if no newspaper is printed in such county, then in some newspaper printed in this territory in general circulation in said county; and such service shall be deemed complete when publication shall have been made in the manner and for the time prescribed as aforesaid, and shall be proved by the affidavit of the printer, or his foreman, or principal clerk, or other person knowing the fact. The notice by publication as aforesaid shall state the court in which the bill is filed and the parties to the action, shall contain a summary statement of the object and prayer of the bill, and shall require the defendant or defendants to appear and answer said bill on the third Monday after the completion of such service as aforesaid.

Dafault; answer; process of attachment.

SEC. 735. If the defendant or defendants shall fail to appear and file in the office of the register, his or their answer, plea, demurrer or exceptions to the bill within the time hereinbefore required, after service is made by subpœna or by publication of notice, the complainant or complainants may in term time take and enter the default of such defendant or defendants, and thereupon the bill shall be taken *pro confesso* and as true, and the cause shall be proceeded in *ex parte*, and such decree shall be rendered or order made therein by the court as the nature of the case may require, if the same can be done without answer. If the complainant or complainants require any discovery or answer to enable him or them to obtain a proper decree, he or they may, on leave of court, have process of attachment against the defendant or defendants, to compel an answer, or may have sequestration of the property of such defendant or defendants, and have his or their demand paid out of the proceeds of the property sequestered: *Provided, however*, That for good cause shown on due notice to the adverse party, the court in term, or a judge thereof or master in vacation, may extend the time of pleading required as aforesaid.

Defendant's answer.

SEC. 736. Every defendant shall fully answer all the allegations and interrogatories of the bill of complaint, except such as are not required to be answered by reason of exceptions, plea or demurrer thereto allowed, unless the court shall otherwise direct.

Scandalous or impertinent matter, how expunged.

SEC. 737. Exceptions to bills and answers for impertinence and scandal, shall be in writing, signed by counsel, describing the particular passages which are considered to be scandalous or impertinent, and shall be filed to bills within the time limited for answering the same, and to answers within the time limited for replying to the same. If the court shall find such exceptions to be well taken, it shall order the register to expunge the scandalous or impertinent matter, describing the matter so to be expunged with such particularity that the same may be identified. The register shall expunge such matter by drawing lines in red ink through the same, and in the margin referring to the order of the court by its date and page of the journal in which it is entered.

Exceptions to answers.

Exceptions to answers for insufficiency shall be in writing, signed by counsel, and shall state fully the matter or interrogatory of the bill remaining unanswered, and shall be filed within the time limited for replying to answers. If the court shall find the answer insufficient, it shall fix the time for putting in a further answer, and specify the same in the order. If such further answer shall still be insufficient, exceptions thereto may be filed in the same manner, and within the same time, as to original answers; and if the court shall find such answer insufficient, it shall fix the time for putting in a second further answer, and specify the same in its order. If such second further answer shall be insufficient, like exceptions may be filed; and if the same shall be found by the court to be insufficient, the matter of the bill to which such exceptions apply, and no other parts of the bill, shall be taken as confessed, unless for cause the court shall otherwise officially order. When exceptions are filed to pleadings, the cause shall be deemed set down to be heard thereon by the court without reference thereof to a master.

Time and manner of filing answers and exceptions.

SEC. 738. Replications shall be general, and shall be filed on the second Monday after the filing of the answer or plea of the defendant. And thereupon either party may enter in the appearance docket the name of the master before whom he will take his testimony, and may proceed therein according to law.

Replications

Testimony.

SEC. 739. After replication is filed, the cause shall be deemed at issue. On default of filing such replication within the time required in the last preceding section, the cause may be set for hearing on bill and answer, unless the court shall otherwise direct.

When cause shall be deemed at issue.

SEC. 740. In all cases where a decree or final order shall be made upon a bill taken *pro confesso*, and the defendant or defendants shall have been brought before the court by publication only, such non-resident defendants may, upon motion in open court, have such decree or order opened for a hearing, upon such non-resident defendant or defendants showing to the satisfaction of the court that he or they have a meritorious defense to the bill, and did not have actual notice of the pendency of the suit in season to make said defense: *Provided*, Such motion shall be made within three years from the entering of such decree or final order: *Provided*, *further*, That infants, idiots and insane persons shall have the right to have such decree or order opened at any time within three years after such disability shall be removed.

When final order or decree may be opened.

SEC. 741. Amendments of pleading may be allowed by the court upon motion and notice thereof to the adverse party, or his solicitor, either by a new engrossment of the pleadings containing the matter of the amendment, or, when the adverse party shall consent thereto in writing, by an interlineation of the amendment. Before the time allowed by the court for amending a pleading has elapsed, the same

Amendments to pleading, how and when made.

may be extended; but after such time has elapsed, further time shall not be granted, unless the court, for special reasons shown, shall by order grant a further extension. Matter arising after a party has filed his pleading, shall be pleaded only by the proper supplemental pleading. A defendant shall plead to an amended bill on or before the fifth Monday after service upon him, or his solicitor, of notice of the filing thereof.

Bill and answer to be verified, except, etc.

SEC. 742. The bill of complaint and the answer thereto, except when the affidavit to the answer is expressly waived by the bill, shall be verified by the affidavit of the party filing the same, or by his agent or solicitor. The verification to the bill, and also to the answer or other pleading when required to be made under oath, may be made by the agent or solicitor—

First. When such party is a non-resident of or is absent from the county in which the action is brought.

Second. When all the facts are within the personal knowledge of the agent or solicitor.

Third. When the party is an infant, or of unsound mind, or imprisoned.

Verification, before whom it may be made.

SEC. 743. The verification of the bill, answer or other pleading may be made before and certified by a person authorized to administer an oath in the state, territory or foreign country in which the party may be or resides at the time. The official character of such officer, if out of this territory, must be attested by the seal of some court of record within such state, territory or foreign power. The verification of a pleading shall be to the effect that the deponent has read the pleading, or has heard it read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters that he believes it to be true, and the substance of the oath administered shall be as stated in the jurat.

Verification of pleading, what shall contain.

Waiver of answer on oath.

SEC. 744. When the complainant or complainants shall waive the necessity of the answer being made on the oath of the defendant or defendants, the answer shall have no other or greater force as evidence than the bill.

When bill is taken *pro confesso*, complainant may be sworn as to facts.

SEC. 745. When a bill is taken *pro confesso*, before final decree is made, if deemed requisite, the court may order the complainant to produce documents and witnesses to prove the allegations of the bill, or may examine him, on oath or affirmation, touching the facts therein alleged.

When execution is returned

SEC. 746. Whenever an execution shall have been issued against the property of any defendant, on a judgment at law or decree in equity, and shall have been returned unsatisfied, in whole or in part, the party issuing such execution may file a bill in chancery against such defendant or defendants, and any other person or persons, to compel the discovery of any real estate, personal property, money or other thing in action due to him or them, or held in trust for him or them; and from and after the date of the service of the subpœna issued on such bill, or the first publication of notice as hereinbefore required, as the case may be, the action shall be deemed pending so as to charge all real estate, personal property, money or other thing in action belonging to or held in trust as aforesaid for said defendant or defendants, with a lien thereon, as in case of attachment at law, and the same shall be subject to the final decree or order of the court which shall be made in the cause. And like proceedings may be had to compel the discovery of a decedent's property whose administrator conceals and misapplies the same.

unsatisfied, bill in chancery may be filed; lien.

Discovery of decedent's property.

SEC. 747. The court shall have power to compel such discovery as is provided in the last preceding section, and to decree satisfaction of the sum remaining due on such judgments or decrees out of the proceeds of the sale of any real estate or personal property, or out of any money or thing in action belonging to the defendant or defendants, which shall be discovered by the proceeding in chancery; and the court is empowered to make all necessary decrees for the sale of real estate or personal property, and to enforce the collection of all money or other thing in action, of such defendant or defendants, discovered as aforesaid: *Provided*, That no answer made to any bill filed under this and the last preceding section shall be read in evidence against the defendant or defendants on the trial of an indictment for the fraud charged in the bill.

Judgments may be satisfied from sale of property discovered by proceedings in chancery.

SEC. 748. No action shall abate by reason of the death, marriage or disability of any party, if the cause of action survive and continue. In either case, the action may be revived and continued by or against the representative of such deceased, or disabled, or married party, by motion made in open court within one year after the death, marriage or disability of the party, or afterwards by supplemental bill and service of subpœna or publication of notice thereof, according to the provisions of sections seven hundred and thirty-two or seven hundred and thirty-four of this code, as the case may be. In case of any transfer of interest, the action may be continued in the name of the original party; or the court may allow the person to whom

Actions shall not abate by reason of death, etc., if cause continue.

the interest is transferred to be substituted in the action by motion or supplemental bill as aforesaid.

Service upon unknown persons, how made.

SEC. 749. In all actions in chancery and actions to obtain title to lands, if there be persons interested in the same whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings by the name and description of persons unknown, or unknown heirs or devisees of any deceased person who has been interested in the subject matter of the action previous to his or her death; but in all such cases an affidavit shall be filed in the office of the register by the party desiring to make any unknown person a party, stating that the names of such persons are unknown to him, and that he has made diligent inquiry to ascertain the name or names of such unknown person or persons, and process shall be issued against all parties by the name and description given as aforesaid, and publication of notice, as is required in section seven hundred and thirty-four, shall be sufficient to authorize the court to hear and determine the action as though all parties had been sued by their proper names.

Orders, decrees, etc. against unknown persons to be valid and binding.

SEC. 750. All decrees, orders and proceedings made or had with respect to such unknown persons shall have the same effect and be as binding and conclusive upon them, as though such action or proceeding had been instituted against them by their proper names.

Court may appoint master to execute decree.

SEC. 751. Whenever a decree shall be made in any suit in chancery, directing the execution of any deed or other writing, and the party against whom the same shall have been entered shall not comply therewith within the time required it. shall be lawful for the court, by an order, to direct a master or specially appoint a commissioner to execute the same. The execution thereof by such master or commissioner shall be as valid in law to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person in conformity with such decree; and such deed or other writing, if it relate to land, shall be recorded in the office of the clerk of the county wherein the lands lie, in the same manner and with like effect as deeds are therein recorded.

Sale may be for cash or on credit.

SEC. 752. In all cases where a sale of property is decreed, the court may direct the same to be made for cash, or on such credit and on such terms as it may deem best and most equitable to the interests of the several parties.

All decrees to be lien upon real

SEC. 753. All decrees rendered for the payment of money, and for the sale of real estate or personal property, shall be and remain a lien upon all real estate of the defendant or defendants within the county in which the action is brought, for the period of five years; and if the amount of such decree, or any balance thereof, shall remain uncollected by the usual proceedings in chancery, the same may be collected by execution, as in cases of execution upon judgments at law. estate for five years.

SEC. 754. When the subpœna has been served, or publication of notice is first made, the action is deemed pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the complainant's right or title thereto. Actions, when deemed pending.

SEC. 755. Any defendant may, after filing his answer, exhibit and file his cross-bill, containing interrogatories to the complainant or complainants, and call upon him or them to make answer thereto. In such case, the complainants shall be held to answer, plead, demur or except to such cross-bill, in the same manner and under the same penalties that a defendant or defendants are hereinbefore required to answer, plead, demur or except to an original bill. If the cross-bill is filed in term time, the complainant or complainants shall answer within such time as the court may order; if filed in vacation, the complainant or complainants shall answer such cross-bill within the time hereinbefore prescribed for defendants to answer original bills; and the issuance, service and return of subpœna, or publication of notice in case of non-residents, shall be the same as hereinbefore provided in the commencement of actions in chancery. Defendant may file cross-bill after answer

SEC. 756. If the complainant or complainants shall fail to answer all the allegations and interrogatories of the cross-bill, his bill shall be dismised with costs, or the new matter set out in the defendant's cross-bill shall be taken *pro confesso* and as true, and a decree entered accordingly. If complainant fail to answer cross-bill, his bill to be dismissed.

SEC. 757. The complainant or complainants shall not be compelled to file his or their answer to any cross-bill until the defendant shall have filed a sufficient answer to the complainant's bill. When answer to cross-bill unnecessary

SEC. 758. No complainant shall be allowed to dismiss his bill, after a cross-bill has been filed, without the consent of the defendant. When original bill shall not be dismissed.

SEC. 759. When a bill is defective for want of parties, the same not appearing on the face of the bill, the defendant may suggest the defect in his answer, stating the name and residence of the party who should be impleaded in the bill, together with his interest in the subject matter in controversy. The complainant may have the cause set down Want of parties; objections, how taken.

for argument on that objection only by entering on the appearance docket an entry to the effect following, to wit: "Set down upon the defendant's objection for want of parties." Where the complainant shall not so set down his cause, but shall proceed therewith to a hearing notwithstanding an objection for want of parties, he shall not, at the hearing of the cause, if the defendant's objection be then allowed, be entitled to an order as of course for liberty to amend his bill, but the court shall be at liberty to dismiss the bill. If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection and therein specified by name and description the parties to whom the objection applies, the court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

Trial.

Powers and duties of master in taking testimony.

SEC. 760. The master who is charged by a party with the taking of testimony, shall, by order in each case, fix a time and place for the taking of such proofs, giving not less than five days notice thereof to the parties, their counsel or solicitors, and the proofs shall be taken in presence of the parties or their agents, or such of them as may attend, and the examination of witnesses shall be conducted, as near as may be, in the mode now used in common law courts. The deposition shall be reduced to writing by the master, and shall be taken in form of interrogatories and answers, unless the parties agree that it may be taken in form of narrative, and when complete, shall be signed by the witness in the presence of the parties or their counsel, or such of them as may attend, but if the witness refuse to sign his deposition, then the master shall state the fact and sign the same. Any question or other matter of evidence which may be objected to, shall be noted by the master at the time, stating the objection, but he shall not have power to decide on the competency, materiality or relevancy of the question or other matter of evidence. If either party shall fail to attend at the time and place of examination, the master may proceed *ex parte*, or in his discretion may adjourn the examination to a future day, giving notice to the absent party or his solicitor, of such adjournment. The master is empowered to issue subpœna to witnesses and process of attachment against such as make default, and to adjourn the examination and proceedings before him, from time to time, until the same is completed, subject, however, to the order of the court.

Special master.

SEC. 761. Upon the application of either party, the court may, in its discretion, appoint a special master in any cause.

SEC. 762. The deposition of any witness residing in any other county in this territory than that in which the action is pending, may be taken, upon notice to the adverse party, stating the title of the cause, the name of the court in which the same is pending, the time and place of taking the deposition, and that the same will be used on the hearing of the cause. Such notice shall be served on the adverse party, his agent or attorney of record, by delivering to said party, his agent or attorney, a copy thereof, or by leaving a copy at his usual place of residence, and shall be served so as to allow said party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sundays and the day of service; and the examination may, if so stated in the notice, be adjourned from day to day.

Depositions.

Notice to adverse party, what to contain.

SEC. 763. Depositions taken under and by virtue of the last preceding section, may be taken before a judge or clerk of the supreme or district court, or before a justice of the peace, notary public, or mayor or chief magistrate of any city of this territory.

Depositions, before whom taken

SEC. 764. On application of the parties to an action, or of any one or more of them, to the register of the court of the county in which the action is pending, the said register shall issue a commission or commissions to take the depositions of witnesses in any other county of this territory, or in any state, territory or foreign country, upon interrogatories filed in his office.

Register may issue commission to take depositions in other county, or state, etc.

SEC. 765. Before the issuance of any such commission, the party applying therefor shall give ten days notice to the adverse party, of the filing of such interrogatories, and that unless cross interrogatories shall be filed in the office of said register within that time, a commission will be issued *ex parte*. The party making the application shall name on his part a commissioner, with the name of the county, city or town, and state, territory or foreign country, of his residence; and the adverse party, on filing cross-interrogatories, may also name on his part a commissioner of the same place. The testimony may be taken before the commissioners, jointly, or before one of them, upon notice to the other, of the time and place of taking the same; and the fact of giving such notice must be stated in the return of the commissioner taking the same.

Notice to adverse party on application for such commission.

SEC. 766. The commissioner or commissioners thus designated and appointed, shall have full power and authority to administer oaths and affirmations to the witnesses or parties examined before him or them, to issue subpœna to said witnesses, and issue process of attachment against such as make default.

Powers of such commissioners.

Proceedings when party is non-resident.

SEC. 767. When the party against whom the deposition is intended to be taken, is a non-resident of this territory, and has no agent or attorney of record in the county in which the action is pending, then a copy of the notice required by section seven hundred and sixty-two for taking the deposition, or a copy of the notice required by section seven hundred and sixty-five of filing interrogatories, as the case may be, shall be filed in the office of the register of the court in which the action is pending fifteen days prior to the time of taking the deposition or the issuance of the commission; and a minute thereof, and of the date of filing such copy, shall be entered on the appearance docket of said court in the cause.

Manner of taking depositions.

SEC. 768. Every deposition taken under the provisions of this title, shall be written in the presence of the officer or person taking the same, either by such officer or person, the witness or some disinterested person, and subscribed by the witness.

Certificate to be annexed to depositions, what it shall specify.

SEC. 769. The officer, commissioner or commissioners taking the deposition, shall annex thereto a certificate, showing—

First. That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth.

Second. That the deposition was reduced to writing in his or their presence, by him or them, or by the witness or some disinterested person, naming him, and that the same was written in the presence of the witness and by him subscribed at the time of taking the same.

Depositions to be sealed up, and endorsed.

SEC. 770. The deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the person taking the same, and by him addressed and transmitted to the register of the court where the action is pending. It shall remain sealed until opened by order of the court, or at the request of a party to the action or his counsel or solicitor.

May be read in evidence.

SEC. 771. The deposition taken as aforesaid, may be read in evidence on the trial or hearing of the cause in which it is taken, and also in any subsequent action wherein the same matter shall be in dispute between the same parties or persons, their heirs, executors, administrators or assigns.

Exceptions to depositions to be in writing.

SEC. 772. Exceptions to depositions taken as aforesaid, shall be in writing, specifying the grounds of objection, and shall be filed with the papers in the cause, and no exceptions shall be regarded except for incompetency, immateriality or irrelevancy, unless made in writing as aforesaid, and filed in the office of the register before the commencement of the trial or hearing of the cause.

Power of masters.

SEC. 773. The master or commissioner is empowered to issue summons and command the presence of witnesses, and to punish witnesses for neglect or refusal to obey his summons, or for refusal to testify when present, unless exempt by statute from giving evidence, by commitment to the jail of the county for contempt; and all sheriffs and constables in this territory are hereby required to serve and return all process issued by masters or commissioners in the taking of depositions. The master shall file the depositions within ten days from the taking thereof.

Either party may appeal from district to supreme court.

SEC. 774. In all actions in chancery, either party may appeal from the decree rendered or final order made by the district court, to the supreme court of this territory. The party appealing shall, within thirty days from the date of the rendition of such decree or the making of such final order, file in the office of the register of the court in which the action is brought, a notice in writing of such appeal; and upon the filing of such notice as aforesaid, and causing a minute thereof and of the date of such filing to be made in said cause upon the appearance docket of said court, the appeal shall be deemed properly taken.

No appeal to operate as a supersedeas, unless, etc.

SEC. 775. No appeal taken as aforesaid shall operate as a supersedeas, unless the appellant or appellants shall, within the time aforesaid, execute, or cause to be executed, a bond on his or their part, to the adverse party, with one or more sureties, as follows:

First. When the decree or final order appealed from directs the payment of money, the bond shall be in double the amount of the decree or final order, conditioned that the appellant or appellants will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him or them on the final determination of the cause by the supreme court.

Second. When the decree or final order directs the execution of a conveyance or other instrument, the bond shall be in such sum as may be prescribed by any district court of this territory, or any judge thereof in vacation, conditioned that the appellant or appellants will prosecute such appeal without delay, and will abide and perform the decree which shall be rendered, or the final order which shall be made by the supreme court in the cause; but instead of such bond, the appellant or appellants may execute the conveyance or other instrument, and deposit the same with the register of the court, to abide the decree or final order of the appellate court.

Third. When the decree or final order directs the sale or delivery of possession of real estate, the bond shall be in such sum as may be prescribed as last aforesaid, conditioned that the appellant or appellants will not, during the pendency of such appeal, commit, or suffer to be committed, any waste upon such real estate, and will prosecute such appeal without delay, and abide and perform in all things the decree which shall be rendered, or the final order which shall be made by the supreme court in the cause.

Fourth. When the decree or final order directs the assignment, cancellation or delivery of conveyances, documents or other instruments, the assignment or cancellation may be made, and the conveyance, documents or other instruments thus assigned or canceled, or to be delivered, may be placed in the custody of the register of the court in which the decree was rendered or final order made, to abide the decree which shall be rendered, or the final order which shall be made, by the supreme court in the cause; or the appellant or appellants may give bond as aforesaid in such sum as may be prescribed as aforesaid, conditioned that he or they will prosecute such appeal without delay, and abide and perform the decree which shall be rendered, or the final order which shall be made, by the supreme court in the cause: *Provided*, That when the application to fix the amount of the bond hereinbefore required, in any case of appeal, is made to any district court or judge thereof, other than the district court in which or the judge before whom the cause has been heard and decided, the party making such application shall give to the adverse party, his agent, counsel or solicitor, at least five days notice in writing, of the time and place of making such application.

Proviso, notice.

Bond to be approved by court before it shall operate as a supersedeas.

SEC. 776. Before any bond executed as aforesaid shall operate as a supersedeas, the execution of such bond, and the sufficiency of the sureties therein, must be approved by the court in which such decree was rendered, or final order made, or by the judge thereof, in vacation, or by the register of said court; and such approval must be endorsed upon the bond, and signed by said court or person taking the same, and the bond filed in the office of the register for the adverse party.

Appellants to file transcript of cause in supreme court within six months.

SEC. 777. The appellant or appellants shall, within six months from and after the date of the filing in the register's office a notice of his appeal, procure from said register and file in the office of the clerk of the supreme court of this territory, a certified transcript of the proceedings had in the cause in the district court, containing the pleadings and the decree rendered, or final order made thereon, and all the depositions of record offered in evidence, and all other evidence of record offered, on the hearing of the cause, and have the cause properly docketed in the said supreme court; and on failure thereof, the decree rendered or final order made in the district court shall stand and be proceeded in as if no appeal had been taken.

In relation to infants or other persons incapable of suing.

SEC. 778. Actions in chancery may be commenced and prosecuted and defended by infants or other persons who are under guardianship, or otherwise incapable to sue for themselves, by their general guardians, by guardians *ad litem*, or by their next friend. A guardian *ad litem* shall be appointed by the court, upon the petition of the party who is incapable of prosecuting or defending a cause for himself. If the application for the appointment is not made within the usual time for the appearance, the adverse party may apply to the court to appoint a suitable person as the guardian. No person shall be appointed a guardian *ad litem* who has any interest adverse to the person for whom he is appointed, or is connected in business with the solicitor or counsel for the adverse party. No money or property belonging to the person for whom the appointment is made, shall be delivered to any guardian *ad litem*, unless he shall, under such directions as the court shall by order make, give a bond with sufficient securities for the faithful application of such money or property, as the court shall direct. Summary application by petition to the court, may be made for all necessary orders directing guardians *ad litem*.

Actions not herein provided for, how conducted.

SEC. 779. All proceedings in actions in chancery not herein provided for, shall be agreeably to the rules and practice in courts in equity.

Action in chancery may be brought to settle adverse titles.

SEC. 780. An action in chancery may be brought and prosecuted to final decree, judgment or order, and all necessary subsequent proceedings thereon, in order to carry into effect such decree, judgment or order, may be had by any person who holds an absolute title to real estate against any person who claims an adverse estate or interest therein for the purpose of determining such estate or interest: *Provided, however*, That the person claiming such adverse estate or interest, is not in the possession of the property: *And provided further*, That the provisions of this title shall not apply to the settlement, partition or division of real estate among the heirs of a decedent, where the same is provided for by the intestate laws of this territory.

District judges may appoint masters in chancery; their powers and term of office.

SEC. 781. The district judges in each of the districts of this territory shall have power to appoint some person residing in each of the organized counties of said district, as a master in chancery, for said counties respectively, who shall hold his office for three years, unless sooner removed by said judge, and shall keep his office at the county seat; said judges shall only have power to remove any master in chancery within their respective districts upon proof, in open court, of incompetency or negligence in discharging his duty; and they shall have power at any time to fill all vacancies, occasioned by removal as herein provided, by death, resignation or otherwise: *Provided*, There may be two masters appointed in each of the counties of Douglas and Otoe.

Oath; powers same as district judge in vacation.

SEC. 782. Said masters in chancery shall be sworn to faithfully perform the duties of their office, and they shall have power to perform the ordinary duties of masters in chancery, together with the duties of a judge of the district court of chancery in vacation.

Removal, etc., works vacancy.

SEC. 783. Whenever the master in chancery for any county shall remove therefrom, or become otherwise incapacitated to discharge the duties of his office, the district court for such county shall declare the office vacant; and appoint another person thereto, in the same manner as if the same had never been filled.

TITLE XXV.

PROBATE COURTS.

CHAPTER I.

POWERS AND DUTIES.

Organization.

SEC. 784. There is hereby established in each organized county in the territory, a probate court, which shall be held at the county seat, on the second Monday of each month, and shall be a court of record.

Powers as justice of the peace.

SEC. 785. Judges of probate shall have and exercise the ordinary powers and jurisdiction of a justice of the peace.

Jurisdiction and powers.

In what cases judges of probate shall not act

SEC. 786. The courts of probate in their respective counties shall have jurisdiction of the probate of wills, the administration of estates of deceased persons, and the guardianship of minors, insane persons, idiots, and such other powers as may be conferred by law: *Provided*, No judge of probate shall act in any case or matter where he is next of kin to the deceased, nor where he is legatee or devisee under a will, nor where he is named as executor or trustee in a will, or is one of the subscribing witnesses thereto, nor where he is so related to any party in interest, in any case before him, by consanguinity or affinity, or has such an interest therein as would exclude him from acting as a juror in such case or matter, nor where he has acted as attorney or counsel in any case or matter before him.

SEC. 787. They shall have power — Their powers.

First. To hear and determine all cases of debts and demands when executors, administrators and guardians shall be parties, plaintiff or defendant, when the amount claimed to be due shall not exceed one thousand dollars.

Second. To hear and determine questions of application for, and to grant and issue letters of administration, testamentary, and of guardianship, and revoke the same.

Third. To take the probate of wills.

Fourth. To determine the persons entitled to letters of administration, testamentary, and of guardianship.

Fifth. To cause to be taken, to receive, file and record all inventories, sale and appraisement bills, of the estates of deceased persons.

Sixth. To require executors, administrators and guardians to exhibit and settle their accounts, and account for the estates and property that have come into their possession as such.

Seventh. To appoint commissioners to partition real estate, and to assign dower.

Eighth. To authorize guardians to sell and convey the real estate of their wards, to provide for the wants, education and support of minors, insane persons, or idiots.

Ninth. To hear and determine all questions arising under, and to enforce, the laws in relation to illegitimate children.

SEC. 788. It shall be the duty of said courts to examine the bonds of all guardians, administrators or executors at least once in every year, and if, upon such examination, any such courts shall have doubts of the solvency or sufficiency of the securities in any such bonds, the court shall notify such guardian, administrator or executor to show cause why he shall not execute a new bond, with surety to be approved by said court as provided by law. Duties.

SEC. 789. If, upon the hearing of such matter, the court shall require a new bond, with sureties, and such guardian, administrator or executor shall fail to comply with the order of the court, he shall be removed from his said trust, and his letters revoked, and another guardian appointed in his place. Same.

SEC. 790. The probate books are to be provided at the expense of the county, and shall consist of a record, entry, Books.

Record book

estate and fee book; the record book shall contain a full record of all wills, testaments and codicils, and the probate thereof, all letters testamentary, of administration, and guardianship, and all bonds of executors, guardians and administrators. The original papers shall be filed and preserved in the office.

Estate book.

SEC. 791. There shall be entered in the estate book, all inventories, appraisements, sale bills, and other exhibits and reports, received by the court, relative to the settlement or disposition of estates, showing the amount of all such estates, as shown by such instruments.

Entry book.

SEC. 792. The entry book shall contain a fair statement of all matters, controversies and suits, that may have arisen for decision or adjudication before said court, with the names of the parties, date of each entry, and the judgment or opinion of the court, and all orders thereof.

Fee book.

SEC. 793. The fee book shall contain an exact account of all fees allowed and paid in each case, showing the names of the persons receiving the same, and for what such fees were paid.

Index.

SEC. 794. To said books shall be attached an index, which shall at all times be kept up with entries in such books, and in which shall be inserted, in alphabetical order, the names of parties or persons in whose names the entries in said books are made.

In case judge is disqualified, county commissioners shall appoint a person to act.

Appointee to give bond

SEC. 795. When any probate judge shall be disqualified from acting in any case or matter before him, or is temporarily absent from his county, the county commissioners of such county may appoint a competent and disinterested person to act in the place of such disqualified or absent judge, in such case or other matter, during such absence or disqualification, who shall give bonds in the same manner and possess the same powers, and be subject to the same duties, restrictions and liabilities therein as are prescribed by law respecting probate judges.

CHAPTER II.

ADOPTION OF CHILDREN.

Adoption of children, how consummated.

SEC. 796. Whenever it may be desirable that any person or persons shall adopt the child of another, the same may be consummated in the manner hereinafter provided.

Same.

SEC. 797. The parents, guardians, or other person or persons having lawful control or custody of any minor child, may make a statement in writing before the probate judge of the county where the person or persons desiring to adopt said child reside, that he, she or they voluntarily relinquish all right to the custody of and power and control over such child (naming him or her), and all claim and interest in or to the services and wages of such child, to the end that such child shall be fully adopted by the party or parties (naming them) desiring to adopt such child, which statement shall be signed and sworn to by the party making the same, before said probate judge, in the presence of at least two witnesses; and the person or persons desiring to adopt such child, shall also make a statement in writing, to the effect that he, she or they freely and voluntarily adopt such child (naming him or her) as their own, with such limitations and conditions as shall be agreed upon by the parties, which said statement shall also be signed and sworn to by the parties making the same before said probate judge, in the presence of at least two witnesses: *Provided*, In all cases where such child shall be of the age of fourteen years and upward, the written consent of such child shall be necessary to the validity of such proceeding: *And provided further*, Whenever it shall be desirable, the party or parties adopting such child may, by stipulations to that effect in such statement, adopt such child, and bestow upon him or her equal rights, privileges and immunities of children born in lawful wedlock, and such statement shall be filed with and recorded by said probate judge, in a book kept in his office for that purpose.

Hearing of application; notice.

SEC. 798. And said probate judge shall appoint a time and place for the hearing of said matter, and shall give three weeks notice thereof to all persons who may be interested in said matter, by publication thereof in a newspaper published in said county, and in case no paper is published in said county, then the notice shall be published in a newspaper printed in this territory, and of general circulation in said county.

Probate judge may make decree after hearing, unless, etc.

SEC. 799. At the time and place of the hearing of such matter, if said hearing shall not be adjourned, the said probate judge shall render a decree therein, in accordance with the conditions and stipulations of said statement: *Provided*, In case it shall appear to the satisfaction of said probate judge, that such proceedings are not for the best interest of the child or children, he may refuse to enter such decree, and the matter shall thereupon be dismissed.

Decree to be conclusive.

SEC. 800. All decrees entered in such case in conformity with the provisions and requirements of this chapter, shall be conclusive upon all the persons interested in such proceedings or matter; and the child or children thus adopted shall take the surname of the person or persons adopting the same, and all relations of parent and child, agreeably to such stipulations and the decree of the probate court, shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and custody of such parent or parents, and shall possess and enjoy all the rights, privileges, inheritance, heirships and immunities of children born in lawful wedlock.

Fees of probate judge. SEC. 801. The probate judge shall be entitled to charge the same fees for such services as now are or hereafter may be provided by law for like services in other cases.

TITLE XXVI.

PARTITION.

Petition. SEC. 802. When the object of the action is to effect a partition of real property among several joint owners, the petition must describe the property and the respective interests of the several owners thereof, if known.

What to be stated. SEC. 803. If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

Lien creditors. SEC. 804. Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties, at the option of the plaintiff.

Costs. SEC. 805. If the lien is upon one or more undivided interests of any of the parties, it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

Answers. SEC. 806. The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interests of any of the other defendants.

Replication. SEC. 807. Where there are two or more plaintiffs they may reply jointly, or either of them may reply to any or all the answers of the defendants.

Issues. SEC. 808. Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

SEC. 809. Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title, if he has any, and must file the same, or copies thereof, with the clerk. Proofs of title.

SEC. 810. If the statements in the petition and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true. Pleadings when taken as true.

SEC. 811. After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly. Judgment.

SEC. 812. Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares. Referees to make partition.

SEC. 813. For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value. Special allotments.

SEC. 814. If it appears to the referees that partition cannot be made without great prejudice to the owners, they shall so report to the court. When partition cannot be made.

SEC. 815. If satisfied with such report, the court shall cause an order to be entered, directing the referees to sell the premises so situated, and shall also fix the terms of sale. Order to sell.

SEC. 816. Before proceeding to sell, the referees shall each give security, to be approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter the court may require further and better security. Security by referees.

SEC. 817. The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner. Notice of sale.

SEC. 818. After completing said sale, the referees must report their proceedings to the court, with a description of the different parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk. Report.

SEC. 819. After making the order of sale as aforesaid, the court shall direct the clerk to report whether there be any general incumbrance by mortgage, judgment or otherwise, upon any portion of the property. Clerk to report incumbrances.

SEC. 820. If deemed advisable, the court may appoint a referee to inquire into the nature and amount of incumbrances, and report accordingly. From that report an appeal lies to the court.

SEC. 821. The referee shall give the parties interested at least five days notice of the time and place when he will receive proof of the amount of such incumbrances.

SEC. 822. In taking such proof he may receive, with other evidence, the affidavit of the parties interested.

How disposed of. SEC. 823. If any incumbrance be ascertained to exist, the proceeds of the sale of that portion, after the payment of costs, or so much thereof as is necessary, shall, if the owner consent, be paid over to the incumbrancer.

SEC. 824. If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court to await final action in relation to its disposition, and notice thereof shall be forthwith given to the incumbrancer, unless he has already been made a party.

Issue. SEC. 825. The court may direct an issue to be made up between the incumbrancer and the owner, which shall be decisive of their respective rights.

Life estates, etc. SEC. 826. If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested, and the proceeds to be paid to the incumbrancer during the existence of the incumbrance.

Delay. SEC. 827. The proceedings in relation to the incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no difficulties exist.

Refunding. SEC. 828. The court in its discretion may require all or any of the parties before they receive the moneys arising from any sale authorized in this title, to give satisfactory security to refund such moneys with interest, in case it afterwards appears that such parties were not entitled thereto.

Conveyances SEC. 829. If the sales aforesaid be approved and confirmed by the court, an order shall be entered, directing the referees, or any two of them, to execute conveyances pursuant to such sales. But no conveyance can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold, or other equivalent security.

Effect of. SEC. 830. Such conveyances so executed, being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

SEC. 831. If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner of the share sold as aforesaid. Party married.

SEC. 832. If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto. Sales disapproved

SEC. 833. When partition is deemed proper, the referees must make out the shares by visible monuments, and may employ a competent surveyor and the necessary assistants to aid them. Partition.

SEC. 834. The report of the referees must be in writing, signed by at least two of them. It must describe the respective shares with reasonable particularity, and be accompanied by a plat of the premises. Report.

SEC. 835. Unless the shares are allotted to their respective owners by the referees as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot. Shares.

SEC. 836. When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold as hereinafter provided. Partition in part.

SEC. 837. On good cause shown, the report may be set aside, and the matter again referred to the same or other referees.

SEC. 838. Upon the report of the referees being confirmed, judgment thereon shall be rendered that the partition be firm and effectual forever. Judgment.

SEC. 839. When all the parties in interest have been duly notified to appear and answer, either by the service of the petition and notice, or by the publication prescribed by law, any of the proceedings above authorized shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings. Effect of.

SEC. 840. The judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject, however, to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenants or tenants in common.

SEC. 841. All the costs of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, Costs.

except those costs which are created by contests above provided for.

Incumbrancer may appear. SEC. 842. Any persons claiming to hold an incumbrance upon any portion of the property involved in the suit, may, in default of the owner, appear and act as his representative in any of the proceedings under this title.

Contingent interests. SEC. 843. Persons having contingent interests in such property may be made parties to the proceedings, and the proceeds of the property so situated (or the property itself, in case of partition,) shall be subject to the order of the court until the right becomes fully vested.

Absent owners. SEC. 844. The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit.

TITLE XXVII.

FORECLOSURE OF MORTGAGES BY ACTION.

Petitions filed. SEC. 845. All petitions for the foreclosure or satisfaction of mortgages shall be filed in the district court in chancery where the mortgaged premises are situated.

Sale. SEC. 846. Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the cost of suit.

Power of court to make decree SEC. 847. When a petition shall be filed for the satisfaction of a mortgage, the court shall not only have the power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary executions as in other cases, against other property of the mortgagor.

After decree no suit at law allowed. SEC. 848. After such petition shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

Various persons made parties, decree in such case

SEC. 849. If the mortgage debt be secured by the obligation or other evidence of debt of any other person besides the mortgagor, the complainant may make such person a party to the petition, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

Statements in the petition required in certain cases.

SEC. 850. Upon filing a petition for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

Petition to foreclose, etc., after judgment at law improper, unless, etc.

SEC. 851. If it appear that any judgment has been obtained in a suit at law for the money demanded by such petition, or any part thereof, no proceedings shall be had in such case, unless, to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgaged premises.

Sales under decree, by whom.

SEC. 852. All sales of mortgaged premises under a decree in chancery, shall be made by a sheriff or other person authorized by the court, in the county where the premises, or some part of them, are situated.

Deed of conveyance, its effect.

SEC. 853. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser the same estate that would have vested in the mortgagee if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Disposition of proceeds of sale.

SEC. 854. The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

As to surplus.

SEC. 855. If such surplus, or any part thereof, shall remain in said court for the term of three months without being applied for, the court may direct the same to be put out at interest under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

When part of claims not due.

SEC. 856. Whenever a petition shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest on any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the petition shall be dismissed upon the defendant bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

Proceedings to be stayed upon payment, etc.

SEC. 857. If, after a decree for sale, entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or installment of the principal, or any interest thereafter to grow due.

Reference may be made, when.

SEC. 858. If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a sheriff to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels, without injury to the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain a security for any subsequent default.

Further order may be made as to sale, etc.

SEC. 859. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order, founded upon such first decree, direct a sale of so much of the mortgaged premises to be made, under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

When sale of the whole will be ordered.

SEC. 860. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

Application of proceeds in such case

SEC. 861. In such case the proceeds of such sale shall be applied as well to the interest, portion or installment of the principal due as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest, for the benefit of the complainant, to be paid to him as the installments or portions of the principal or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

TITLE XXVIII.

ARBITRATIONS.

SEC. 862. All controversies which might be the subject of civil actions, may be submitted to the decision of one or more arbitrators as hereinafter provided. Of what.

SEC. 863. The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf, for the same subject matter, must sign a written agreement specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered. How submitted.

SEC. 864. They shall then appear before some justice of the peace of the county and acknowledge the instrument by them signed to be their free act and deed. Same.

SEC. 865. The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides. What submitted.

SEC. 866. A submission to arbitrators of the subject matter of a suit may also be made by an order of court, upon an agreement of parties, after suit is commenced. Of suit.

SEC. 867. All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties. Rule.

SEC. 868. Neither party shall have the power to revoke the submission without the consent of the other. Irrevocable.

SEC. 869. If either party neglect to appear before the arbitrators, after due notice, they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them. Default.

Award. Sec. 870. If the time within which the award is to be made is fixed in the submission, no award made after that time shall have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported.

Same. Sec. 871. If the time of filing the award is not fixed in the submission, it must be filed within one year from the time such submission is signed and acknowledged, unless by mutual consent the time is prolonged.

Same. Sec. 872. The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders.

When docketed. Sec. 873. The cause shall be entered on the docket of the court at the term to which the award is returned, and shall be called up and acted upon in its order. But the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award.

In court. Sec. 873. The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a re-hearing to the same arbitrators or any others agreed upon by the parties.

Filing, effect of. Sec. 874. When the award has been confirmed, it shall be filed and entered on the record, and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly.

Appeals. Sec. 875. When an appeal is taken from such judgment, copies of the submission and award, together with all affidavits, shall be returned to the supreme court.

Costs. Sec. 876. If there is no provision in the submission respecting costs, arbitrators may award them at their discretion.

Compensation. Sec. 877. The compensation of the arbitrators shall be two dollars per day, for the time actually and necessarily spent, unless the court fix a less amount; and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so), and the like amount for taking and certifying the acknowledgment thereto.

Saving. Sec. 878. Nothing herein contained shall be construed to affect in any manner the control of the district court over the parties, the arbitrators, or their award, nor to impair or affect any action upon an award or upon any bond or other engagement to abide an award.

TITLE XXIX.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAPTER I.

PROCESS.

Style of all process, etc.

SEC. 880. The style of all process shall be "The Territory of Nebraska, ——— County." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it issued.

Process when sheriff is a party.

SEC. 881. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

Court may appoint a person to make service.

SEC. 882. The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

CHAPTER II.

DUTIES OF CLERKS.

Clerks to issue all process upon precipe filed.

SEC. 883. All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk, demanding the same; which precipe shall be for the direction of the clerk, and not material to the papers in the case after the issuing of such writ or process.

Filing papers.

SEC. 884. It is the duty of the clerk of each of the courts, to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

Time of filing papers

SEC. 885. He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a pro-to be indorsed.

visional remedy, and upon every undertaking given under the same, the day of its return to his office.

Entry on docket of parties summoned.

SEC. 886. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

To keep records.

SEC. 887. He shall keep the records, and books and papers appertaining to the court, and record its proceedings.

Article eight, title nine, applicable to all clerks.

SEC. 888. The provisions of article eight, of title nine, of this code, prescribing the duties of clerks of the district court, shall, as far as they are applicable, apply to the clerks of other courts of record.

Powers and duties generally.

SEC. 889. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duties he shall be under the direction of his court.

CHAPTER III.

DUTIES OF SHERIFFS.

Sheriff to endorse the time of receiving process.

SEC. 890. The sheriff shall endorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and the hour it was received by him.

To execute and return process; liability, etc.

SEC. 891. He shall execute every summons, order, or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

Powers and duties generally.

SEC. 892. The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

Duties may be performed by deputies.

SEC. 893. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

SEC. 894. Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect. When affirmation sufficient.

SEC. 895. The time within which an act is to be done as herein provided, shall be computed by excluding the first day and including the last; if the last day be Sunday, it shall be excluded. Time, how computed.

SEC. 896. Section four hundred and thirty-two shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same. Right of a party in default to a jury.

SEC. 897. The ministerial officer, whose duty it is to take security in any undertaking provided for by this code, shall have the right to require the person offered as surety to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security. Person offered as surety may be required to qualify.

SEC. 898. The surety in every undertaking provided for by this code, must be a resident of this territory, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this territory equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this section. Qualification of sureties.

SEC. 899. The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the territory and revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code; and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court and the district courts. Judges of the supreme court to make rules.

CHAPTER V.

PROVISIONS RESPECTING EXISTING ACTIONS.

SEC. 900. The provisions of this code do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment, or decree, in all respects as if it had not been adopted; but the provisions of this code shall apply after a judgment, order or decree here- Application of the code to suits pending.

tofore or hereafter rendered, to the proceedings to enforce, vacate, modify or reverse it.

CHAPTER VI.

PROVISIONS AS TO THE OPERATION OF THE CODE.

Rights of action under existing laws to be enforced under this code.

SEC. 901. Rights of civil action given or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in the following section. If a case ever arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

This code not to control special proceedings.

SEC. 902. Until the legislature shall otherwise provide, this code shall not affect proceedings on *habeas corpus*, *quo warranto*, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce or alimony, or to establish or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy or insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

When form of action and mode of proceeding expressly provided for by statute, code may be used to a certain extent.

SEC. 903. Where, by general or special statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates by name or otherwise the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

TITLE XXX.

JUSTICES OF THE PEACE.

CHAPTER I.

JURISDICTION.

Jurisdiction limited to county of residence

SEC. 904. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside.

In what cases justice has jurisdiction.

SEC. 905. Justices of the peace, within and co-extensive with their respective counties, shall have jurisdiction and authority —

First. To administer an oath or affirmation authorized or required by law to be administered.

Second. To take the acknowledgment of deeds, mortgages, and other instruments of writing.

Third. To solemnize marriages.

Fourth. To issue subpœna for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions.

Fifth. To try the action for forcible entry and detention, or the detention only, of real property.

Sixth. To proceed against security for costs and bail for the stay of execution on their dockets.

Seventh. To issue attachments, and proceed against the goods and effects of debtors in certain cases.

Eighth. To issue executions on judgments rendered by them.

Ninth. To proceed against constables, failing to make return, making false return, or failing to pay over money collected on execution, issued by such justice.

Tenth. To try the right of the claimant to property taken in execution or on attachment.

Jurisdiction in trespass to real estate.

SEC. 906. Justices shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such trespass shall not exceed one hundred dollars, and no claim of title to such real estate set up by the defendant, shall take away or affect the jurisdiction hereby given.

In what cases shall not have jurisdiction.

SEC. 907. Justices shall not have cognizance of any action —

First. To recover damages for an assault, or assault and battery.

Second. In any action for malicious prosecution.

Third. In actions against justices of the peace or other officers for misconduct in office, except in the cases provided for in this title.

Fourth. In actions for slander, verbal or written.

Fifth. In actions on contracts for real estate.

Sixth. In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate which are provided for in this title.

CHAPTER II.

COMMENCEMENT OF SUITS, SERVICE AND RETURN OF PROCESS, AND PROCEEDINGS IN ARREST AND ATTACHMENT.

Actions how commenced.

SEC. 908. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former the action is deemed commenced, upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case the action is deemed commenced at the time of docketing the case.

Guardian.

SEC. 909. When a guardian to the suit is necessary, he must be appointed by the justice as follows:

First. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice.

Second. If the infant be defendant, the guardian must be appointed before trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

Summons.

SEC. 910. The style of the summons shall be: "The Territory of Nebraska, —— County;" it shall be dated the day it is issued, and signed by the justice issuing the same; be directed to the constable or sheriff of the proper county, (except in case a person be deputed to serve it, in which case it shall be directed to such person); must contain the names of the defendant or defendants, if known, and if unknown, give a description of him or them, and command the officer or person serving the same, to summon the defendant or defendants to appear before such justice, at his office, in —— county, at a time specified therein; and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him. There shall be endorsed on the writ, the amount for which the plaintiff will take judgment if the defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

When returnable.

SEC. 911. The summons must be returnable not more than twelve days from its date, and must, unless accompanied with an order to arrest, be served at least three days before the time of appearance, by delivering a copy of the summons, with the endorsement thereon, (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence: *Provided*, That an acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

How served against a corporation.

SEC. 912. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

SEC. 913. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

SEC. 914. When the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent.

How served when defendant is under fourteen years.

SEC. 915. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian or father; or if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

Appearance.

Parties entitled to one hour.

SEC. 916. The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case, the justice may postpone the time of appearance until the close of such trial.

Arrest before Judgment.

When order for arrest made.

SEC. 917. An order for the arrest of the defendant in a civil action, shall be made by the justice of the peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars:

First. That the defendant has removed or begun to remove any of his property out of the county, with intent to defraud his creditors.

Second. That the defendant has begun to convert his property, or any part thereof, into money, for the purpose of defrauding his creditors.

Third. That he has property or rights in action which he fraudulently conceals.

Fourth. That he has assigned, removed or disposed of, or begun to assign, remove or dispose of his property, or any part thereof, with intent to defraud his creditors.

Fifth. That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought.

Affidavit.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

Order of arrest.

SEC. 918. The order of arrest may be made to accompany the summons, or at any time afterwards, before judgment.

When not to be issued.

Written undertaking required.

SEC. 919. The order of arrest shall not be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the county where suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim, stated in the affidavit.

SEC. 920. The order of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable or sheriff of the proper county; it shall state the names of the parties, the amount of the plaintiff's claim specified in the affidavit, be signed by the justice of the peace issuing it, and shall require the constable or sheriff to arrest the defendant and bring him forthwith before said justice.

How addressed and what to contain.

SEC. 921. The officer receiving said order shall execute the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit. And the defendant, so arrested, unless the claim of the plaintiff specified in the affidavit, and costs of suit, are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable or sheriff forthwith before the justice of the peace by whom said order of arrest was issued, and kept in custody until discharged by law.

How executed.

SEC. 922. Upon the return of said order of arrest, executed in pursuance of the preceding section, the trial of said cause shall proceed, unless for good cause shown, upon the application of either party, or at the instance of the justice himself, the same shall be continued, as is provided for in other cases before justices of the peace. And when the trial of said cause is continued for any period, the defendant, upon executing with one or more sufficient sureties, a written undertaking to the effect that he will pay the amount of the judgment that may be rendered against him upon the final determination of the action, or upon depositing in the hands of the justice of the peace the amount of money mentioned in the order of arrest, and the probable amount of costs of suit, shall be forthwith discharged from custody: *Provided, however*, That in no case shall the defendant be detained in the custody of the officer, when said continuance has been for a period of more than forty-eight hours, unless said continuance has been made at the instance or with the consent of the defendant himself.

Continuance.

Arrest after Judgment.

SEC. 923. On the judgment against the defendant in any civil suit before a justice of the peace, when the defendant is in the custody of the officer, as hereinbefore provided for, or if, after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars mentioned in section nine hundred and seventeen, said justice of the peace shall, unless otherwise ordered

Order of arrest to accompany execution.

by the plaintiff, issue an execution, and accompany the same with an order for the arrest of the defendant.

How addressed, and what to contain.

SEC. 924. Said order of arrest shall be addressed and delivered, with a copy of the affidavit, to the officer having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy execution sufficient to satisfy the same cannot be found in his county, to arrest the defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law: *Provided, however*, That no such order of arrest be issued until the undertaking required by the nine hundred and nineteenth section of this code shall have been executed.

Attachment.

Order of attachment.

SEC. 925. The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a justice of the peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, the amount which the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars:

Affidavit, what to contain.

First. That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the territory; or,

Second. Has absconded, with intent to defraud his creditors; or,

Third. Has left the county of his residence to avoid the service of a summons; or,

Fourth. So conceals himself, that a summons cannot be served upon him; or,

Fifth. Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or,

Sixth. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of creditors; or,

Seventh. Has property or rights in action, which he conceals; or,

Eighth. Has assigned, removed or disposed of, or is about to dispose of his property, or a part thereof, with intent to defraud his creditors; or, *Ninth.* Fraudulently contracted the debt, or incurred the obligation for which suit is about to be or has been brought. When the defendant is a foreign corporation, or a non-resident of the territory, the attachment shall not be granted, unless the claim is for a debt or demand arising upon contract, judgment or decree.

When order of attachment to issue without undertaking; undertaking to be given in all other cases.

SEC. 926. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the territory, the order of attachment may be issued without an undertaking, but in all other cases the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Order of attachment, what to contain.

SEC. 927. The order of attachment may be made to accompany the summons, or it may be issued at any time afterwards before judgment; it shall be addressed and delivered to any constable or sheriff of the proper county, and shall require him to attach the goods, chattels, stocks, or interest in stocks, rights, credits, moneys and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Return day.

SEC. 928. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

Several orders of attachment, how executed.

SEC. 929. When there are several orders of attachment against the same person, in the hands of the same officer, they shall be executed in the order in which they are received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that, by virtue of said order, he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said residents, and returned with the order; when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice.

When officer shall deliver

SEC. 930. The officer shall deliver the property attached to the person in whose possession it was found, upon the property attached to persons in whose possession it was found.

execution by such person, in the presence of the officer, of an undertaking to the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

Different attachments made. One appraisement sufficient.

SEC. 931. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

Justice to determine priority of lien.

Order of attachment, how served upon defendant.

SEC. 932. If the order of attachment is made to accompany the summons, a copy thereof, and the summons, shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued on the action has not been and cannot be served on the defendant in the county, in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty days nor more than sixty days, whereupon the plaintiff shall proceed for three consecutive weeks to publish, in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice, stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and thereupon said action shall be proceeded with, the same as if summons had been duly served.

Publication of notice.

Perishable property and live stock attached may be sold.

SEC. 933. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order, directing the officer having the custody thereof to dispose of the same as upon execution; and the moneys realized therefrom shall be paid over to the justice, and applied as other money realized from the sale of the property attached is applied.

Garnishee.

SEC. 934. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to believe, and does believe, that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice, that he appear before the justice at the return of the order of the attachment, and answer as provided in section nine hundred and thirty-six.

How notice served on garnishee.

SEC. 935. The copy of the order and the notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier or managing agent thereof.

Garnishee shall appear and answer.

SEC. 936. The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and, in the case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

Garnishee may pay money owing to defendant to officer or into court.

SEC. 937. A garnishee may pay the money owing to the defendant by him, to the officer having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

Proceedings if garnishee do not appear.

SEC. 938. If the garnishee do not appear and answer, as required by section nine hundred and thirty-six, the justice may proceed against him by attachment, as for a contempt.

When garnishee has property of defendant

SEC. 939. If the garnishee appear and answer, and it is discovered, on his examination, that at or after the service of the order of attachment and notice upon him he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

When garnishee may be proceeded against.

SEC. 940. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing, into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action in his own name, as in other cases; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

When final judgment rendered against garnishee.

SEC. 941. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys and credits of the defendant, in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

When garnishee may be discharged, costs how paid.

Judgment for defendant, effect of.

SEC. 942. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

Judgment for plaintiff, how satisfied.

SEC. 943. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

Justice may order property retaken.

SEC. 944. The justice may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money, and the officer shall under such order have the same power to take the property as he would have under an order of attachment.

Property claimed by third party, title how tested.

SEC. 945. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Priority of attachments, how determined.

SEC. 946. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

What must be shown o return of order of attachment.

SEC. 947. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

Order of attachment binds the property, from what time.

SEC. 948. An order of attachment binds the property attached from the time of service, and the garnishees shall stand liable to the plaintiff in attachment for all property, moneys and credits in his hands, or due from him to the defendant, from the time he is served with a written notice, mentioned in section nine hundred and thirty-four; but when property is attached in the hands of a consignee or other person having a prior lien, his lien thereon shall not be affected by the attachment.

Attachment discharged on giving an undertaking.

SEC. 949. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit, to the effect that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

Proceedings where defendant has no personal property, but an interest in real estate.

SEC. 950. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from the examination of the garnishee, that no property, moneys, rights, credits or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending, shall, at the request of the plaintiff, forthwith certify his proceedings to the district court of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court, in all respects as if the same had originated therein.

CHAPTER III.

BILL OF PARTICULARS.

In what cases to file bill of particulars.

SEC. 951. In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills.

Requisites.

SEC. 952. The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set off.

Amendments.

SEC. 953. The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the items, when, by such amendments, substantial justice will be promoted. If the amendment be made at the time of or during the trial, and it be made to appear, to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion, require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required unless an adjournment is made necessary by the amendment.

CHAPTER IV.

CHANGE OF THE PLACE OF TRIAL.

Change of venue, for what and how.

SEC. 954. The place of trial may be changed, if, on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case, that such justice is a material witness for either party, or, if a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct or place for which said justice may have been elected, on account of the bias or prejudice of the citizens thereof.

When to another justice or township.

SEC. 955. If the place of trial be changed on account of the justice being a material witness in the cause, such cause may be transferred for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken to some justice in an adjoining precinct in the same county.

Papers, etc. to be transmitted.

SEC. 956. The justice granting such change shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein and have the same jurisdiction, powers and duties, in all respects whatever, as if suit had been originally instituted before him.

Condition of such change

SEC. 957. Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

As to costs.

SEC. 958. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpœnas for witnesses, and service thereof, witness fees, and costs of the justice for transferring the cause to the docket of the other justice.

CHAPTER V.

ADJOURNMENTS.

By justice, on his own motion.

SEC. 959. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows:

When for forty-eight hours.

First. Where a party is in attendance who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours, and the defendant, if under arrest, to continue in custody.

Or eight days.

Second. In other cases, not to exceed eight days, unless by consent of parties.

If the trial be not adjourned, it must take place immediately upon the return of the summons.

For thirty days, on application of party. How cause therefor shown.

SEC. 960. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial.

Adjournment for ninety days.

SEC. 961. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof by the oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for the want of material evidence, describing it, that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

CHAPTER VI.

WITNESS.

In what case justice may issue subpœna.

SEC. 962. Any justice may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

SEC. 963. A subpœna may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence. How served.

SEC. 964. When not served by a constable or sheriff, or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it. No fees, when.

SEC. 965. If any witness, having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter, or otherwise, render unnecessary the examination of such witness. Costs, when not examined.

SEC. 966. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpœna to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity with such subpœna, the justice shall issue a warrant for the arrest of the delinquent, for the purpose of compelling his attendance, and punishing his disobedience. When warrant for arrest of witness to be issued.

SEC. 967. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the territory of Nebraska against the delinquent, and may be enforced against his person or property. Punishment of witness for contempt.

SEC. 968. Every person subpœnaed as aforesaid, and neglecting to appear, or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpœnaed, for all damages which such party shall sustain by reason of such delinquency. Liability of witness for neglect, etc.

Depositions.

SEC. 969. Depositions may be taken to be read in a cause pending before a justice of the peace, in like manner, and subject to the same restrictions and rules of law as in cases pending in the district court. In what cases taken and used.

CHAPTER VII.

THE TRIAL, AND ITS INCIDENTS.

When. SEC. 970. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

Appearance and trial without process. SEC. 971. Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment and execution, in all respects in the same manner as if summons had been issued, served and returned.

Jury.

May be demanded. SEC. 972. In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of twelve good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. Number and qualifications. When a jury is demanded, the trial of the cause must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days; the jury must be immediately selected, as herein provided.

How jury made up. SEC. 973. The justice shall write in a panel, the names of twenty-four persons, citizens of the county, from which the defendant, his agent or attorney, shall strike one, and then the plaintiff, his agent or attorney, shall strike one, and so alternately, until each shall have stricken six names, and the remaining twelve shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party.

Summons, and its form. SEC. 974. The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance as near as practicable:

THE TERRITORY OF NEBRASKA, }
——— COUNTY. }

To any Constable or Sheriff of ——— *County:*

You are hereby commanded to summon ——— to appear before me at ———, in said county, on the —— day of ——, A. D. ——, at — o'clock in the ——noon; to serve as jurors in a case pending before me, then and there to be tried. And this they shall in no wise omit.

And have you then and there this writ, with your doings thereon.

Given under my hand this —— day of ——, A. D. ——.

———, *Justice of the Peace.*

Service of summons.

SEC. 975. The officer shall serve such summons by a personal service thereof, and return the same, endorsed with the names of the persons summoned, at the time appointed for the trial of the case. Jurors, for neglecting to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.

Liability of jurors for not attending, etc.

Constable or sheriff shall attend court

SEC. 976. The constable or sheriff shall be in attendance on the court at and during the progress of the trial; and if, from challenge or other cause, the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the district court.

Jurors to attend on adjournment.

SEC. 977. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for trial without further notice.

Objections to juror, how tried.

SEC. 978. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.

Oath of jury

SEC. 979. The justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence.

Their duty.

SEC. 980. After the jury shall have been sworn, they shall sit together and hear proofs and allegations of the parties; and after hearing the same, shall be kept together in some convenient place, under the charge of a constable or sheriff, until they have agreed upon their verdict, or shall be discharged by the justice.

Verdict, its entry on docket.

SEC. 981. When the jury shall have agreed upon their verdict, they shall deliver it to the justice, publicly, who shall enter it upon his docket.

Proceedings when jury cannot agree.

SEC. 982. Whenever the justice shall be satisfied that a jury, sworn in any cause before him, cannot agree in the verdict, after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided. The cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they agree that the justice may render judgment on the evidence already before him.

When verdict may be set aside.

SEC. 983. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three days notice.

Proceedings in such case. SEC. 984. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

What cases may be appealed. SEC. 985. If either the plaintiff or defendant, in his bill of particulars, claims more than twenty dollars, the case may be appealed to the district court; but if neither party demands a greater sum than twenty dollars, and the case is tried by jury, there shall be no appeal.

Who to pay costs on appeal. SEC. 986. If, on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the district court (including a fee of five dollars to defendant's attorney); and in case the defendant shall demand a set-off greater than twenty dollars, and he appeal, and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

Fees of jury by whom paid. SEC. 987. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Bill of exceptions. SEC. 988. In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice, upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill, containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause.

Arbitrations.

Suit may be referred to arbitrators; proceedings in such cases. SEC. 989. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties; and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, sheriff, or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

The award, and judgment and execution thereon.

SEC. 990. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereon render judgment and issue execution as in other cases.

How and for what such judgments may be set aside.

SEC. 991. Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days of the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

When award may be set aside by justice.

SEC. 992. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment as if such award had never been made.

Appeal from judgment on award, what affidavit required.

SEC. 993. But no appeal shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption or other undue means.

When judgment on award to be set aside.

SEC. 994. And if, on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

If not obtained by fraud, etc., a judgment to be recovered.

SEC. 995. But if the court shall be of opinion that the award was not obtained by fraud, corruption or other undue means, they shall render judgment thereon for the costs of suit, and award execution as in other cases.

Trial of the Right of Property Levied on or Attached.

The notice, its service and when.

SEC. 996. When a constable or sheriff shall levy on or attach property, claimed by any person or persons other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

Where trial may be had.

The trial and judgment, etc.

SEC. 997. If, on the trial, the justice shall be satisfied, from the proof, that the property, or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued, for the costs, and issue execution therefor, and shall, moreover, give a written order to the officer who levied on or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants.

Same.

SEC. 998. But if the claimant or claimants fail to establish his or their right to such property or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor; and the officer shall not be liable to the claimant or claimants for the property so taken.

CHAPTER VIII.

JUDGMENTS.

Non-suit.

SEC. 999. Judgment, that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases:

First. When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

Proceedings on default of appearance, proofs, etc., of parties.

SEC. 1000. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed, and there be no evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

When judgment may be set aside.

SEC. 1001. When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions:

First. That his motion be made within ten days after such judgment was entered.

Second. That he pay or confess judgment for the costs awarded against him.

Third. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before the time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

When judgment must be entered.

SEC. 1002. Upon a verdict, the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the defendant has been arrested or his property attached; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

Proceedings when sum due exceeds jurisdiction.

SEC. 1003. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

Or when defendant offers to permit judgment to be taken for a certain sum.

SEC. 1004. If the defendant, any time before trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. But if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it, cannot be given in evidence, to affect the recovery, otherwise than as to costs as above provided.

Statement in judgment that defendant subject to arrest on it.

SEC. 1005. Where judgment is rendered in a case where the defendant is subject to arrest and imprisonment, it must be so stated in the judgment, and entered in the justice's docket.

CHAPTER IX.

APPEALS.

Generally.

SEC. 1006. In all cases not otherwise specially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

The undertaking; its amount and condition, etc.

SEC. 1007. The party appealing shall, within ten days from the rendition of judgment, enter into an undertaking to the adverse party, with at least one good and sufficient surety to be approved by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, conditioned —

First. That the appellant will prosecute his appeal to effect and without unnecessary delay.

Second. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs.

Such undertaking need not be signed by the appellant.

Filing transcript and other papers in district court.

SEC. 1008. The said justice shall make out a certified transcript of his proceedings, including the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which such appeal may be taken, on or before the second day of the term thereof next following such appeal; and such justice shall also deliver or transmit the bill or bills of particulars, the depositions and all other original papers, if any used on the trial before him, to such clerk, on or before the second day of such term; and all other proceedings before the justice of the peace, in that case, shall cease and be stayed from the time of entering into such undertaking.

Same, docketing case.

SEC. 1009. The clerk, on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal.

The parties in district court, pleadings, etc.

SEC. 1010. The plaintiff in the court below shall be the plaintiff in the district court; and the parties shall proceed, in all respects, in the same manner as though the action had been originally instituted in the said court.

Proceedings in court on failure to deliver transcript.

SEC. 1011. If the appellant shall fail to deliver the transcript and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings of such justice, and the said cause shall, on motion of the said appellee, be docketed;

and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed according to the provisions of this chapter, shall fail to file his petition, or otherwise neglect to prosecute the same to final judgment, the said plaintiff shall become non-suited, and it shall be the duty of said court to render judgment against such appellant for the amount of the judgment rendered against him by the justice, together with interest accrued thereon and for costs of suit, and to award execution therefor, as in other cases.

And on failure to prosecute appeal.

Proceedings before justice if parties fail to perfect appeal.

SEC. 1012. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or, being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

Effect of less recovery than in court below.

SEC. 1013. If any person appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

Liability of surety.

SEC. 1014. When any appeal shall be dismissed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs and damages, recovered against the appellant.

Cause of quashing must be stated.

SEC. 1015. When an appeal taken to the district court shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

Change of undertaking

SEC. 1016. In proceeding on appeal when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient in form or amount, it shall be lawful for the court, on motion, to order a change or renewal of such undertaking, and direct the same to be certified to the justice from whose judgment the appeal was taken, or that it be recorded in said court.

Cases in which no appeal allowed.

SEC. 1017. Appeals in the following cases shall not be allowed:

First. On judgments rendered on confession.

Second. In jury trials, where neither party claims in his bill of particulars a sum exceeding twenty dollars.

Third. In the action for the forcible entry and detention, or forcible detention only, of real property.

Fourth. In trials of the right of property, under the statutes, either levied upon by execution or attached.

Proceedings if justice's commission expire before appeal taken.

SEC. 1018. When the term of office of a justice shall expire between the date of the judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered the docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript, and do and perform all things required of his predecessor.

CHAPTER X.

OF THE ACTION FOR THE FORCIBLE ENTRY AND DETENTION, OR FORCIBLE DETENTION ONLY, OF PROPERTY.

Jurisdiction of justice.

SEC. 1019. Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

Against whom proceedings may be had.

SEC. 1020. Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sales by executors, administrators or guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession. This section shall not be construed as limiting the provisions of section one thousand one hundred and nineteen.

Actions not a bar to a second.

SEC. 1021. Judgments, either before the justice or in the district court, under this chapter, shall not be a bar to any after action brought by either party.

Notice, when and how served.

SEC. 1022. It shall be the duty of the party desiring to commence an action under this chapter, to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

Complaint to be first filed; requisites of; to be recorded.

SEC. 1023. The summons shall not issue until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record.

Summons, when to be served.

SEC. 1024. The summons shall be issued and directed, shall state the cause of the complaint, and the time and place of trial, and shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice.

Proceedings if defendant fails to appear.

SEC. 1025. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present.

Continuance and undertaking therefor.

SEC. 1026. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

When justice to try cause.

SEC. 1027. If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant, and in favor of the plaintiff, for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

Trial by jury. The verdict.

SEC. 1028. If a jury be demanded by either party, the proceedings, until the empanneling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed, to well and truly try and determine whether the complaint of (naming the plaintiff) about to be laid before them is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

Its entry, and judgment.

SEC. 1029. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

eptions.

SEC. 1030. Exceptions to the opinion of the justice, in cases under this chapter, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise.

Execution.

SEC. 1031. Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

Form.

THE TERRITORY OF NEBRASKA, } *ss.*
——— COUNTY. }

To any Constable or Sheriff of ——— *County:*

Whereas, In a certain action for the forcible entry and detention (*or* the forcible detention, *as the case may be*,) of the following described premises, to wit: ———, lately tried before me, wherein ——— was plaintiff, and ——— was defendant, judgment was rendered on the —— day of ——, A. D. ——, that the plaintiff have restitution of said premises; and also that he recover costs in the sum of ——. You therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also, that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return.

Witness my hand, this —— day of ——, A. D. ——.

———, *Justice of the Peace.*

And service. Proceedings stayed.

SEC. 1032. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of a writ of error, he shall immediately delay all further proceedings upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ, with his proceedings and cost taxed thereon.

CHAPTER XI.

OF THE REPLEVIN OF PROPERTY.

SEC. 1033. The plaintiff may recover possession of specific personal property of less value than one hundred dollars, before a justice of the peace as herein provided. Jurisdiction of justice.

SEC. 1034. An action for this purpose shall not be brought until there is filed in the office of the justice, an affidavit of the plaintiff, his agent or attorney, showing — Affidavit.

First. A description of the property claimed. What it shall show.

Second. That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.

Third. That the property is wrongfully detained by the defendant.

Fourth. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against said plaintiff.

SEC. 1035. Upon such affidavit being made, and filed with the justice, he shall issue a summons as in other cases, but in addition commanding the officer immediately to seize and take into his custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff. The summons, its command.

SEC. 1036. The constable or sheriff shall execute the writ by taking the property therein mentioned; he shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence; and shall make return of the time and manner of service, the appraisement of the property, and any undertaking taken by him. How writ executed.

SEC. 1037. The officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him. The undertaking.

How value of property taken to be ascertained.

SEC. 1038. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two responsible persons, whom the officer shall swear truly to assess the value thereof.

Proceedings when property exceeds one hundred dollars.

SEC. 1039. Whenever the appraised value of the property so taken shall exceed one hundred dollars, the justice shall certify the proceedings upon the said writ to the district court of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries, in the clerk's office of said court; the case there to be proceeded in as if said suit had commenced in said court.

Effect of not giving undertaking

SEC. 1040. If the undertaking required by section one thousand and thirty-seven, be not given within twenty-four hours from the taking of the property under said order, the officer shall return the property to the defendant. And if the officer deliver any property so taken, to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Trial of right of property, and finding of the jury and costs.

SEC. 1041. If the property has been delivered to the plaintiff, and judgment be rendered against him, or if he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant, or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that the said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled only to the possession of the same, at such time, then in either case they shall assess such damages for the defendant as are right and proper, for which, with costs of suit, the court shall render judgment for the defendant. And in all cases where the property has been delivered to the plaintiff, unless the jury shall find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant, for which, with costs of suit, the court shall render judgment for the defendant.

Jury shall assess damages for illegal detention.

SEC. 1042. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

SEC. 1043. When the property claimed has not been taken, or has been returned to the defendant, for want of the undertaking required by section one thousand and thirty-nine, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by said section, the plaintiff shall pay all costs made by taking the same. Proceedings when property claimed not taken, or returned to defendant.

SEC. 1044. The officer, in executing the writ, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure, and the delivery of the property, after having demanded the same. Breaking open buildings to execute writ.

SEC. 1045. No suit shall be instituted on the undertaking given under section one thousand and thirty-seven, before an execution, issued on a judgment in favor of the defendant in the action, shall have been returned that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county. Suit on the undertaking.

SEC. 1046. If any justice shall issue a writ to replevin property, as is provided by this chapter, without the affidavit being made and filed in his office as is provided in section one thousand and thirty-four, the same shall be set aside at his costs, and he shall be liable in damages to the party injured. Penalty for issuing writ without affidavit.

CHAPTER XII.

EXECUTION — RETURN — STAY OF EXECUTION — NOTICE OF SALE — DELIVERY — UNDERTAKING.

SEC. 1047. Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this title), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon. Execution may issue within five years on request.

SEC. 1048. It shall be the duty of the justice if the case be not appealed, taken up on error, docketed in the district court, or bail has not been given for the stay of execution, at the expiration of ten days from the entry of the judgment, to issue execution, without a demand, and When issued without demand.

proceed to collect the judgment, unless otherwise directed by the judgment creditor.

When stay of execution to be applied for, and undertaking therefor.

SEC. 1049. Any person against whom judgment may be rendered under the provisions of this title, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

How long stay granted.

SEC. 1050. The stay of execution hereby authorized, shall be graduated as follows, namely:

First. On any judgment for five dollars and under, the stay shall be for sixty days, and on all sums over fifty dollars and under one hundred dollars the stay shall be for six months.

Second. On any judgment exceeding five dollars and under fifty dollars the stay shall be for ninety days.

Third. Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long, that the stay will expire one month before that allowed to the surety on the judgment against him.

In what cases no stay.

SEC. 1051. No stay of execution on judgments rendered in the following cases shall be allowed:

First. On judgments rendered against justices of the peace, for refusing to pay over money by them collected or received in their official capacity.

Second. On any judgment rendered against an officer for failing to make return, making a false return, or refusing to pay over money collected in his official capacity.

Third. On judgments against bail for the stay of execution.

Fourth. Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal.

Fifth. On judgments obtained by constables or sheriffs, on undertakings executed to them for the delivery of property.

Recall of execution.

SEC. 1052. If the execution issued before the undertaking for stay, or that required in case of appeal, be given, and such undertaking be given afterward and within the time allowed, the justice shall recall the execution.

Proceedings

SEC. 1053. Where any person who has become bail for stay of execution, shall remove out of the county before the expiration of such stay, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases.

Where person becoming bail for stay removes.

SEC. 1054. When any surety for the stay of execution shall become apprehensive, that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

When execution may issue notwithstanding the stay.

SEC. 1055. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him, as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear by the return of the officer[1] that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

How in such case second stay obtained.

SEC. 1056. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this title, the original judgment shall remain good and valid in law, for the use of such bail, who, at any time thereafter may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so endorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use, which shall have the same force and effect as transcripts in other cases.

When judgment to stand for benefit of bail; who may obtain execution and transcript.

SEC. 1057. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety, on or by the third day after the giving of such notice; such facts shall be entered on the docket, and he shall immediately

Proceedings to obtain further surety for stay.

issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled and stayed until the expiration of the original stay.

Execution, to whom directed; its requisites. SEC. 1058. The execution must be directed to a constable or sheriff of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where and the time when, it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must require the officer substantially as follows:

First. If it be a case where the defendant cannot be arrested, it must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto.

Second. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, shall be exhausted, before any property of the bail shall be taken in execution.

Third. If it be a case where the defendant may be arrested, in addition to the foregoing it must direct the officer, if sufficient property of the defendant subject to the execution cannot be found to satisfy the judgment, that he arrest the debtor and commit him to the jail of the county until he pay the judgment, or be discharged according to law, unless the execution be accompanied by an order of arrest, as provided in sections nine hundred and twenty-three, and nine hundred and twenty-four.

Fourth. It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

Against joint debtors some of whom not served. SEC. 1059. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to arrest thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property.

Officer may omit to arrest, or permit escape, but, etc.

SEC. 1060. The officer may, at his peril, omit to arrest a debtor, or after arrest suffer him to go at large before the return day, subject only for his liability for an escape, or for omitting to arrest, if he fail to have either the money or the person of the debtor in custody at the expiration of thirty days.

When sheriff may discharge prisoner.

SEC. 1061. It shall be lawful for the sheriff or jailer receiving any person imprisoned on execution issued in any civil proceeding, at any time when there is no money in his hands to pay for the sustenance of such prisoner, to discharge him from prison. The jailer may, however, detain such prisoner, the adverse party being liable for such sustenance.

How long debtor may be imprisoned.

SEC. 1062. The debtor committed as herein provided, may be held in prison ten days, and, if he be a person without a family for which he provides, one day in addition for every dollar over ten due on the execution; or if he has a family for which he provides, one day in addition for every two dollars over twenty due on the execution.

Affidavit of the prisoner sufficient evidence.

SEC. 1063. The affidavit of an imprisoned debtor, that he has a family for which he provides, specifying by name one or more persons, members of such family, and the place of their residence, is sufficient evidence thereof to authorize his discharge by the jailer.

Liability of officer.

SEC. 1064. The officer is liable to the party in whose favor an execution issued to him for the amount thereof, in the following cases:

First. Where he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him.

Second. Where he willfully and carelessly omits to levy on property within thirty days, or if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days.

When justice to commence action on undertaking

SEC. 1065. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment, for the amount remaining due.

Proceedings against the bail for stay when defendant shall die.

SEC. 1066. Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and returned not satisfied for want of goods and chattels whereon to levy.

Sale on Execution.

The notice of sale.

SEC. 1067. All property taken in execution under the provisions of this title, shall be advertised for sale at four of the most public places within the precinct where such property was seized, at least ten days previous to the time appointed for such sale, which shall be held within the hours of ten o'clock A. M., and four o'clock P. M., at the house or on the premises where such property was taken, or at one of the most public places within the precinct.

Justice and officer not to purchase.

SEC. 1068. It shall not be lawful for any justice of the peace who issued the execution, nor for the officer holding the execution, to purchase, either directly or indirectly, any property sold on such execution. And any justice or officer who shall offend against the provisions of this section, shall forfeit and pay, for every such offense, any sum not exceeding one hundred dollars nor less than five dollars, to be recovered by civil action in the name of the territory of Nebraska, before any court having jurisdiction thereof, for the use of the county where such offense was committed; and shall, moreover, be liable to the action of the party injured thereby.

Allowance for keeping stock.

SEC. 1069. When any cattle or other live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment whereon such execution issued, to allow the officer, for keeping the same, a reasonable compensation, to be taxed and collected as other costs in the suit.

Inventory.

SEC. 1070. When a constable or sheriff shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold.

Schedule to be returned of goods not sold; order for their sale

SEC. 1071. Where a constable or sheriff shall have levied on any goods and chattels which remain unsold for want of bidders or other just cause, it shall be his duty to return, with the execution, a schedule of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter issue an order, thereby commanding any officer to whom the same may be directed or delivered, to expose such property for sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

Security for re-delivery of property.

SEC. 1072. Any officer having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for the sale thereof.

Rights, etc., of landlord or tenant in crops, etc., against whom writ was not issued, protected.

SEC. 1073. In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon shall be levied on or attached, by virtue of any execution, attachment or other process against the landlord or tenant, the interest of such landlord or tenant, against whom such process did not issue, shall not be affected thereby.

Excuse of officer for failure to execute writ

SEC. 1074. In cases where the constable or sheriff shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this chapter, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue further process of execution, for the amount of balance remaining unsatisfied; which shall be served and returned, in all respects, as other executions are under this chapter.

CHAPTER XIII.

OF CONSTABLES AND SHERIFFS, AND THEIR DUTIES.

General powers.

SEC. 1075. All constables and sheriffs shall be ministerial officers in justices' courts, in their respective counties, in civil and criminal cases, and civil and criminal process may be executed by them throughout the county.

Duty in executing process.

Sheriff to have concurrent

SEC. 1076. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable. And sheriffs shall have all the powers and be subject to all the liabilities of constables in power with constable. the service and return of all processes issued by justices of the peace in their respective counties.

May call aid. SEC. 1077. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable or sheriff to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed or stayed, upon which he has an execution, on notice thereof to return the execution, stating thereon such fact.

Return.

To note time of receiving writ. SEC. 1078. It shall be the duty of every constable or sheriff, on the receipt of any writ or other process (subpœnas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

Must go to defendant's residence. SEC. 1079. No officer shall make a return on any process of "not found," as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any in the county.

To arrest on view, and keep the peace. SEC. 1080. It shall be the duty of every constable and sheriff to apprehend, on view or warrant, and bring to justice, all felons and disturbers, and violaters of the criminal laws of this territory, to suppress all riots, affrays and unlawful assemblies, which may come to his knowledge, and, generally, to keep the peace in his proper county.

Extent of constable's authority. SEC. 1081. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted by law to a sheriff, under like process issued from courts of record.

Same powers as sheriff.

On taking prisoners to jail to leave copy of process with jailer. SEC. 1082. When it shall become the duty of the officer to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the execution, commitment or other process, whereby he holds such person in custody, and return the original to the justice who issued the same; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail, until discharged by due course of law.

To whom to pay over money. SEC. 1083. Constables and sheriffs shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent or attorney, at any time before he returns the writ upon which he has received it; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

Penalties against.

SEC. 1084. Constables and sheriffs shall be liable to twenty per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making false return, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

CHAPTER XIV.

GENERAL PROVISIONS.

Civil code to apply to justices' courts when applicable.

SEC. 1085. The provisions of this code which are in their nature applicable, and in respect to which no special provision is made by statute, shall apply to proceedings before justices of the peace.

The docket, what it must contain.

SEC. 1086. Every justice must keep a book, denominated a docket, in which must be entered by him —

First. The title of every action in which the writ is served, or where the parties voluntarily appear.

Second. The date of the writ, the time of its return, and if an order to arrest the defendant or attach property was made, such fact must be stated, together with the affidavit upon which such order was made.

Third. The filing of the bill of particulars of either party, and nature thereof, and when not of too great length, the same shall be entered at length on the docket.

Fourth. Which of the parties, if either of them, appear at the trial.

Fifth. Every adjournment, stating on whose application, whether on oath or consent, and to what time.

Sixth. When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial.

Seventh. The names of the jurors who appear and of those sworn, the names of all witnesses sworn, and at whose request.

Eighth. The exceptions to the ruling of the justice, on questions of law, taken by either party.

Ninth. The verdict of the jury, and when received; if the jury disagree and are discharged, that fact must be stated.

Tenth. The judgment of the justice, specifying the items of costs included, and the time when rendered.

Eleventh. The issuing of execution and orders to sell, when issued and to whom, the renewals thereof, if any, and when made, the return and when made, and a statement of any money paid to the justice, and by whom.

Twelfth. The giving of a transcript to be filed in the clerk's office, and when given.

Thirteenth. If appeal be taken, the undertaking and the time of entering into the same, and by which party taken.

Fourteenth. The undertaking for stay of execution, and the time of giving the same.

Fifteenth. The satisfaction of the judgment, and the time of satisfying the same.

How and when entries made.

SEC. 1087. The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when they occurred, except that bills of exceptions, in regard to the rulings on questions of law or evidence, need not be entered until after the judgment, unless required by the justice or one of the parties; such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

The index.

SEC. 1088. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names; he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

How papers kept.

How justices to dispose of dockets, laws and papers at expiration of term.

SEC. 1089. It is the duty of every justice, upon the expiration of his term of office, to deposit with his successor, his official docket, as well his own as those of his predecessor which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request.

Justice receiving same to receipt.

SEC. 1090. A justice receiving by succession or on deposit, any such docket, papers and laws, shall, if requested, give a receipt therefor to the person from whom he receives the same.

How justice receiving such books and papers may proceed

SEC. 1091. The justice with whom the docket of another may be deposited, either during a vacancy or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like monner as if the same had been originally had or instituted before him.

Sickness or disability of justice.

If justice sick or absent, another justice to try the cause.

SEC. 1092. In case of the sickness or other disability or necessary absence of a justice, at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice before whom the writ was returnable. If the case be adjourned, the justice before whom the summons was returnable must resume jurisdiction.

Papers containing blank, void.

SEC. 1093. The summons, execution and every other paper made or issued by a justice, must be filled up without a blank to be filled by another; otherwise it is void.

Justice may depute person to serve summons.

SEC. 1094. A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order, to arrest the defendant, or to attach property. Such deputation must be in writing on the process.

Authority of such person.

SEC. 1095. The person so deputed has the authority of a constable, in relation to the service, execution and return of such process, and is subject to the same obligation, but there can be no fee for his services taxed in the bill of costs.

Contempts which justice may punish.

SEC. 1096. A justice may punish, as for contempt, persons guilty of the following acts, and no others:

First. Disorderly, contemptuous or insolent behavior towards the justice, tending to interrupt the due course of the trial, or other judicial proceedings before him.

Second. A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Willful resistance in the presence of the justice, to the execution of a lawful order or process made or issued by him.

Proceedings in such cases.

SEC. 1097. A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him, or may convict him for the offense, and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.

Same.

SEC. 1098. The conviction, specifying particularly the offense and the judgment thereon, must be entered in his docket; a warrant of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable or sheriff to whom it may be given, and by the jailer of the county.

Justice may require non-resident to give security.

SEC. 1099. When a person intending to bring an action before a justice of the peace, is a non-resident of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for the costs of suit; which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs, after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued, and that probably will accrue, or require, in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a nonsuit against the plaintiff or plaintiffs.

Or plaintiff, who removes after action commenced.

When evidence of indebtedness to be filed.

SEC. 1100. In all actions instituted before a justice of the peace, founded upon any bond, bill, promissory note or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file said bond, bill, promissory note or other written evidence of indebtedness, upon which said suit is brought, with such justice of the peace; and if upon the trial judgment shall be entered thereon, in favor of the plaintiff, such bond, bill, promissory note or other instrument in writing, shall be retained by the justice so rendering judgment, who shall endorse thereon the sum for which he shall have entered judgment (provided the same shall in no wise exceed one hundred dollars), and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, bill, promissory note or other instrument of writing, for the recovery of any other sum or sums, the payment of which is secured by the same bond, bill, promissory note or other written evidence of indebtedness: *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, bill, promissory note or other written evidence produced before him on trial, to the clerk of the district court, to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal: *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligation for the purpose of prosecuting any party to said obligation, other than the party against whom judgment may have been rendered.

How justice to endorse the same.

No other suit to be instituted thereon.

If appeal taken, papers to be transmitted

Proviso as to joint obligation.

SEC. 1101. It shall not be lawful for any justice of the peace to purchase any judgment, upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed.

Penalty against justice for purchasing judgment.

SEC. 1102. The provisions of this title do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment and determination in all respects as if it had not been adopted.

Suits pending not affected by this title.

SEC. 1103. The jurisdiction of justices of the peace shall not extend to any case when the sum in question shall exceed one hundred dollars, but may extend to that sum in all cases except as limited in this title.

Jurisdiction as to amount.

PART III.

CRIMINAL CODE.

CHAPTER I.

PERSONS CAPABLE OF COMMITTING CRIMES.

Definition of crime.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence.

Intention.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Sound mind

SEC. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infants.

SEC. 4. An infant, under the age of ten years, shall not be found guilty of any crime or misdemeanor.

Lunatics.

SEC. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, The act so charged as criminal shall have been committed in the condition of insanity.

Idiots.

SEC. 6. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

Counseling idiots, lunatics and infants to commit crime.

SEC. 7. Any person counseling, advising or encouraging an infant, under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense, when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot.

Married woman acting under coercion of husband.

SEC. 8. A married woman, acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appear, from all the facts and circumstances of the case, that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife if she had been found guilty.

Drunkenness.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion.

Acts committed by accident, etc.

SEC. 10. Acts committed by misfortune or accident shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Commission of crime under threats and menaces.

SEC. 11. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

Proceedings where the accused becomes insane, etc., pending the prosecution.

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person shall become lunatic or insane, then, in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all such cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

CHAPTER II.

ACCESSORIES TO CRIMES.

Accessories at and before the fact

SEC. 13. An accessory is he or she who stands by and aids, abets or assists; or who, not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

Accessories after the fact.

SEC. 14. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

CHAPTER III.

WHO MAY BE WITNESSES IN CRIMINAL CASES.

Party injured a competent witness.

SEC. 15. The party or parties injured shall, in all cases, be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her or their infamy, or other legal incompetency other than that of interest. The credibility of all such witnesses shall be left to the jury, as in other cases.

Approvers.

SEC. 16. Approvers shall not be allowed to give testimony.

Affirmation.

SEC. 17. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit willful and corrupt perjury.

CHAPTER IV.

OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

SEC. 18. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned. Murder.

SEC. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Express malice.

SEC. 20. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death. Implied malice.

SEC. 21. Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection. Manslaughter.

SEC. 22. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. Voluntary.

SEC. 23. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as a murder.

SEC. 24. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: *Provided, always*, That where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution Involuntary.

of a felonious intent, the offense shall be deemed and adjudged to be murder.

Punishment.

SEC. 25. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding ten years.

Death must take place within a year and a day to constitute murder, etc.

SEC. 26. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which, the whole of the day on which the hurt was done shall be reckoned the first.

Place of trial.

SEC. 27. If the injury be inflicted in one county and the party die within another county or without the territory, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county and the party killed be in another county at the time the cause of death shall be administered, the accused may be tried in either county.

Justifiable homicide.

SEC. 28. Justifiable homicide is the killing of a human being in necessary self-defense, or in the defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Bare fear insuficint to justify.

SEC. 29. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

Killing in self-defense, what must appear.

SEC. 30. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

Killing by an officer.

SEC. 31. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, or other crime, denominated felony by this code, and he be resisted in the endeavor to take the person accused, and, to prevent the escape of the accused by reason of such resistance, he kill the person accused, the officer so killing shall be justified: *Provided*, That such officer, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person.

Killing by unavoidable necessity.

SEC. 32. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer, who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence of the law of the land.

Excusable homicide.

SEC. 33. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another.

Same.

SEC. 34. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

Person to be acquitted.

SEC. 35. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Onus probandi.

SEC. 36. The killing being proved, malice shall be presumed, and the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Concealing death of bastards.

SEC. 37. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Petit treason abolished.

SEC. 38. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly.

Fighting duel.

SEC. 39. If any person hereafter shall willfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abetters and counselors, being thereof duly convicted, shall be considered to have committed a felony, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years nor less than one year.

Challenging to fight duel

SEC. 40. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either, or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this territory, and be fined in a sum not exceeding one hundred dollars.

Carrying challenge to fight duel.

SEC. 41. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid.

What indictment to specify.

It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abetters or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought or intended to be fought, so that it be alleged in the indictment that the engine, weapon or instrument was deadly, the probable consequence of fighting with which might be the death of either of the parties.

Administering poison.

SEC. 42. Every person who shall willfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death

Abortion.

of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.

Mayhem.

SEC. 43. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be adjudged guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year nor more than three years: *Provided*, That no person shall be found guilty of mayhem where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat.. But in all other cases where the fact shall happen in actual fight, the party accused, being thereof duly convicted, shall be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

Deprivi person of testicles

SEC. 44. Any person who shall willfully and maliciously deprive any person of either or both, or of any part of either or both of his testicles, shall be punished by imprisonment in the penitentiary not less than five years nor more than fifteen years.

Rape.

SEC. 45. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upward, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and may extend to life.

Emission.

SEC. 46. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Crime against nature.

SEC. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Assault. SEC. 48. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Any person thereof duly convicted shall be fined in a sum not exceeding one hundred dollars.

Assault with intent to commit murder. SEC. 49. An assault with an attempt to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to confinement in the penitentiary for a term not less than one year nor more than fourteen years. With deadly weapon. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a felony, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

Assault and battery. SEC. 50. Assault and battery is the unlawful beating of another. Any person thereof duly convicted shall be fined in any sum not less than five dollars nor exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or both fined and imprisoned as aforesaid.

False imprisonment. SEC. 51. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Kidnapping. SEC. 52. Kidnapping is the forcible abduction or stealing away of a man, woman or child from his or her own country, and sending or taking him or her into another.

Same. SEC. 53. Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, in this territory, and carry him or her into another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Penalty. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year and not more than seven years, for each person kidnapped or attempted to be kidnapped.

Enticing away colored people with a view SEC. 54. Every person who shall hire, persuade, entice, decoy or seduce, by false promises, misrepresentations and the like, any negro, mulatto or colored person, not being a slave, to go out of this territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto or colored person, any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

to sell them into slavery.

CHAPTER V.

CRIMES AND OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

Arson.

SEC. 55. Every person who shall willfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, malt house, stilling house, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this territory, such person so offending shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

Setting fire with intent to burn, etc.

SEC. 56. Every person who shall willfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

Punishment

Burglary.

SEC. 57. Every person who shall, in the night time, willfully, maliciously and forcibly break and enter, or willfully and maliciously, without force (the doors or windows being open), enter into any dwelling house, kitchen, office, shop, storehouse, warehouse, malt house, stilling house, mill, pottery, factory, water craft, church or meeting house, with intent to commit murder, robbery, rape, mayhem, larceny or other felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

Unlawful destruction of buildings or boats, or premeditated injury to persons, not being felony; penalty.

SEC. 58. If any person or persons, unlawfully or riotously assembled, pull down, injure or destroy; or begin to pull down, injure or destroy, any dwelling house or other building; or destroy, or attempt to injure or destroy, any boat or vessel, or perpetrate any premeditated injury on the person of another, not being a felony, they shall each be punished by imprisonment in the penitentiary not more than five years; or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year; and shall also be answerable to any person injured, to the full amount of the damages by him sustained, in an action at law.

Also answerable for damages in action at law.

CHAPTER VI.

CRIMES AND OFFENSES RELATIVE TO PROPERTY.

Robbery.

SEC. 59. Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Larceny.

SEC. 60. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary for a term not less than one year and not more than ten years.

SEC. 61. If any person shall remove, haul or in any manner take away any claim, house, shanty or other building, the property of another, he shall be deemed guilty of a larceny, and, upon conviction thereof, shall be punished as provided in the last preceding section.

Receiving stolen goods.

SEC. 62. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary for any term not less than one year nor more than ten years; and every such person may be tried, convicted and punished, as well before as after the trial of the principal. No person, convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to twenty-five dollars.

Property to be restored.

SEC. 63. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same.

Altering marks or brands.

SEC. 64. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jenney, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year nor more than three years: *Provided*, That no person shall be condemned to the penitentiary, under this section, unless the value of the property affected shall amount to twenty-five dollars. And in case the value of the property affected by the offenses herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery or burglary, shall not amount to twenty-five dollars, then the offender shall be punished by imprisonment in the county jail for a term not exceeding three months, and fined not exceeding fifty dollars.

Grand and petit larceny.

Embezzlement by territorial, county and corporate officers.

SEC. 65. Every servant, officer or person employed in any public department, station or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

Officers collecting or receiving public moneys, and not paying over same, how punished.

SEC. 66. If any officer or person who now is or hereafter may be entrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct in this territory, to any canal, turnpike or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek or other water course, bordering on or within this territory, or to any other fund, now in being, or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders, ought by law to be paid over, or by his or their attorney or agent duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary for any term not less than one year nor more than ten years: *Provided*, That no person shall be committed to the penitentiary, under this section, unless the money not paid over shall amount to five dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

Person convicted disqualified for holding office.

Destroying or defacing deeds, etc.

SEC. 67. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any bank bill or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or of any state or any other territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand of any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice or injure any person or body corporate, shall, upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

Removing dmarks, etc.

SEC. 68. Every person who shall knowingly, maliciously and fraudulently cut, fell, alter or remove any certain boundary tree or other allowed landmark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months.

Embezzlement by servants, etc.

SEC. 69. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels, shall be intrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill or note, or goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or, being in the service of his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

By bailees.

SEC. 70. If any bailee of any money, bank bill or note, or goods or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

By lodgers.

SEC. 71. If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods or chattels, which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

CHAPTER VII.

FORGERY AND COUNTERFEITING.

Forgery.

SEC. 72. Every person who shall falsely make, alter, forge or counterfeit any record, or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this territory or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed or attempted to be passed as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not; every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Penalty.

Counterfeiting coin.

SEC. 73. Every person who shall counterfeit any of the species of gold and silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to pay or give in payment, such counterfeited coin, or permit, cause or procure the same to be altered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Having counterfeit coin in possession.

Uttering same.

SEC. 74. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current, or hereafter to be current in this territory, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary not less than one year nor more than fourteen years.

Having forged bank notes, etc., in possession.

Unfinished bill, etc.

SEC. 75. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills; for the payment of money, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession, any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporated bank or banking company in this territory or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Fictitious bills.

SEC. 76. Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory or elsewhere, or, with like intention, shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish, any fictitious bill, note or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership or individual, when in fact there shall be no such bank, corporation, copartnership or individual in existence, the said person, knowing the said bill, note, check or instrument of writing for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Having in possession dies, etc., used in forging coin.

SEC. 77. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now current, or hereafter to be current, in this territory, or in counterfeiting bank notes or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines, intended for the purposes aforesaid, shall be destroyed.

Penalty.

Evidence.

SEC. 78. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 79. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Forging seals, etc.

SEC. 80. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

CHAPTER VIII.

OFFENSES BY PUBLIC OFFICERS.

Officers or persons entrusted with public money.

SEC. 81. If any officer or person who now is or hereafter may be entrusted by law to collect, receive, safely keep, disburse or pay over any money or moneys, revenue or revenues belonging to this territory or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct of this territory, to any canal, turnpike or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other water-course bordering on or within this territory, or to any other fund now in being or hereafter to be established by law for public purposes, shall directly or indirectly purchase or procure any order, warrant, certificate, or any other evidence of public indebtedness, to the payment of which such moneys, revenue or fund, is by law to be applied, at any loss, depreciation or discount below the nominal value thereof, or shall in any manner obtain any order, warrant, certificate, or other evidence of public indebtedness by any other means or manner than by the payment of the same according to law, out of such public moneys, revenue or fund, at the full nominal value thereof, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years.

Penalty for paying taxes with warrants where the money is forwarded

SEC. 82. Any deputy county treasurer, or any other person, who shall take from any post-office, or receive in any other way, any letter addressed to or intended for the county treasurer of any county in this territory, containing money for the payment of any tax in this territory, which shall have been lawfully assessed, and shall in lieu thereof pay into the county treasury warrants of any description or denomination, shall, on conviction by indictment, be fined not exceeding five hundred dollars, and be imprisoned in the county jail not less than one month and not more than one year.

Officers converting public money into evidence of public indebtedness.

SEC. 83. If any person or officer within this territory charged with the collection, safe-keeping, transfer or disbursement of public money, shall convert any of such public money into any order, warrant, certificate, or any evidence of public indebtedness, and shall deposit the same with any public officer of this territory, in lieu of money, he shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary not less than one year nor more than three years.

CHAPTER IX.

OFFENSES AGAINST PUBLIC POLICY.

Issuing bills, etc., to circulate as money.

SEC. 84. If any person shall subscribe or become a member of, or be in any way interested in any association or company for the purpose of issuing or putting in circulation any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this territory, without being authorized so to do by charter from the legislative assembly of this territory, he shall be punished by imprisonment in the penitentiary not more than one year, or by a fine not more than one thousand dollars.

CHAPTER X.

CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

Perjury.

Subornation

SEC. 85. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, willfully, corruptly and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Death caused by perjury.

SEC. 86. Every person who, by willful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent persons, shall be deemed and adjudged guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

Indictment.

SEC. 87. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

SEC. 88. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present or reward or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce or influence such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly, to be more favorable to one side than the other, on any question, election, matter or thing pending, or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in anywise receive or accept the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary not less than one year nor more than five years. **Bribery.**

SEC. 89. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, member of the legislative assembly, or other officer, ministerial or judicial, (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or other- **Same.**

wise contrary to law, the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

Same.

SEC. 90. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

Embezzling, altering, etc., of public record.

SEC. 91. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book, or any proceeding whatever, of, or belonging to, any public office within this territory, the person so offending, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than seven years.

Oppression by jailers.

SEC. 92. Every jailer who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

Officer whose term of office has expired, withholding records, etc., from his successor.

SEC. 93. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall willfully and unlawfully withold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writings appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary for a term not less than one year nor more than five years. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall willfully mutilate, destroy, withold or detain the same as aforesaid.

Personation

SEC. 94. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years.

Resisting officer.

SEC. 95. If any person shall, knowingly and willfully, obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this territory, or other person duly authorized, in serving or attempting to serve any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or other officer or person duly authorized, in serving or executing, or attempting to serve or execute any process or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Rescue of prisoners.

SEC. 96. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Same.

SEC. 97. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable by confinement in the penitentiary, such person so offending shall, on conviction, be fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 98. If the warden of the penitentiary, or any servant, officer or agent, belonging to, or in employment at the same, or any sheriff, deputy sheriff or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary, to solitary confinement for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

Escape of prisoners.

SEC. 99. If the warden of the penitentiary, or other person as aforesaid, shall negligently suffer any convict committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or, contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine not exceeding two hundred dollars.

Conveying tools to prisoner.

SEC. 100. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding six months.

Rescue.

SEC. 101. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

SEC. 102. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offense against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey, or cause to be delivered to such prisoner any disguise, instrument or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made), shall, on conviction, be punished by fine not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding one year. Aiding in escapes and rescues.

SEC. 103. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or attempt to rescue, any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person, who shall have the lawful custody of such prisoner, every person so offending shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year. Same.

SEC. 104. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder, or other capital offense, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars. Suffering prisoner to escape or go at large. Penalty.

SEC. 105. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall willfully refuse to receive or arrest any person charged with a criminal offense, then such sheriff, coroner, jailer, constable or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months in the county jail. Refusal to arrest accused persons.

SEC. 106. If any person shall take money, goods, chattels, lands or other reward, or promise thereof, to compound any criminal offense, such person shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or Compounding crimes.

property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

Conspiracy. SEC. 107. If any two or more persons shall conspire or agree, falsely and maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

Intruding into offices. SEC. 108. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being lawfully authorized thereto, he shall upon conviction, be fined in any sum not exceeding two hundred dollars.

Embracery. SEC. 109. Embracery is an attempt to influence a juror or jurors corruptly to one side by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the petit jurors.

Common barratry. SEC. 110. If any person shall wickedly and willfully excite and stir up any suits or quarrels between the people of this territory, either at law or otherwise, with a view to promote strife and contention, every such person, so offending, shall be deemed to have committed the crime of common barratry, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counselor at law, he shall be suspended from the practice for any time not exceeding six months.

Maintenance. SEC. 111. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person, so offending, shall be deemed to have committed the crime of maintenance, and, upon conviction thereof, shall be fined and punished as in cases of common barratry: *Provided*, That it shall not be considered maintenance for a man to maintain the suit of his kinsman or servant, or poor neighbor, out of charity.

Extortion.

SEC. 112. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this territory, ministerial or judicial, shall willfully or corruptly receive or take any fee or reward, to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall willfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer, so offending, shall be deemed guilty of extortion, and, on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Officers guilty of oppression, omission or malfeasance

SEC. 113. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, or prosecuting attorney, who shall be guilty of any palpable omission of duty, or who shall willfully or corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from office. The court shall have power, whenever any clerk of the district or supreme court, or prosecuting attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk or prosecuting attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

Threatening letters.

SEC. 114. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money goods, chattels, or other valuable things, or threatening to maim, wound, kill or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable thing be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

CHAPTER XI.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

Disturbing the peace.

SEC. 115. If any person, at late and unusual hours of the night time, maliciously or willfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging to fight or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisoned not exceeding two months.

Unlawful to keep open shop, etc., or do work, etc., on the Sabbath.

SEC. 116. It shall be unlawful for any person or persons to keep open his, her or their shop, store, grocery, trading-house, or saloon, to be present at any dancing, public diversion, show or other public entertainment, to take part in any sport, game or play, or to perform any manner of work, labor or business, except only works of necessity or charity, on the first day of the week, commonly called the christian sabbath, and every person so offending, shall be punished by a fine not exceeding ten dollars for each and every offense.

No person who does not conscientiously believe in such observance liable.

SEC. 117. No person who does not conscientiously believe the observance of the first day of the week to be a christian duty, shall be liable to any fine or punishment for performing any secular work or productive labor, on the said first day of the week, provided he or she disturb no other person.

Disturbance of public assembly met for worship, penalty.

SEC. 118. If any person shall, on the sabbath or first day of the week, or at any other time, by rude or indecent behavior, or in any other way, intentionally disturb or interrupt any assembly of the people, met for the worship of God, within the place of such meeting or out of it, he shall, on conviction thereof before any justice of the peace, be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding fifty dollars.

What time sabbath to include.

SEC. 119. For the purposes of the provisions of this chapter, the said first day of the week shall be understood to include all the time between the midnight preceding and the midnight following the said day; and no prosecution for any fine or penalty incurred under any of the preceding provisions of this chapter, shall be commenced after the expiration of three months from the time when the offense shall have been committed.

SEC. 120. Whoever shall violate either of the provisions of this chapter, upon conviction before any justice of the peace of the county in which the offense shall have been committed, shall be fined as herein prescribed, and the moneys accruing from said fines shall be for the benefit of common schools within the county where the offense may have been committed. Fine for benefit of schools.

SEC. 121. It shall be the duty of all county treasurers to apply for and receive from justices of the peace within their counties, all moneys that may have been collected by the enforcement of this chapter, and such moneys shall be a part of the general school fund. Duty of county treasurers to apply for fines.

SEC. 122. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer, persons so offending shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned not exceeding one month. Unlawful assemblages

SEC. 123. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray, and on conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both fined and imprisoned as aforesaid. Affrays.

SEC. 124. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, shall be severally fined in a sum not exceeding fifty dollars, or imprisoned not exceeding three months. Unlawful assemblage.

SEC. 125. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding four months. Rout.

SEC. 126. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, the persons so offending shall be deemed guilty of a riot, and on conviction, shall severally be fined not exceeding two hundred dollars, or imprisoned not exceeding three months. Riot.

SEC. 127. If any judge, justice of the peace, sheriff or Neglect of duty by conservators of the peace. other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding one hundred dollars.

Publishing handbill, etc., calling another a coward for not accepting a challenge, etc. SEC. 128. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill, or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however*, That the testimony given by any such witness shall in no case be used in any prosecution against such witness.

Libel. SEC. 129. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule. Every person, whether writer or publisher, convicted of this offense, shall be fined in a sum not exceeding five hundred dollars, or imprisoned not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

CHAPTER XII.

OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

Bigamy. SEC. 130. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be at the time of such second marriage, divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Single person marrying the wife or husband of another.

SEC. 131. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned not more than one year.

Adultery or fornication.

SEC. 132. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction shall be fined in any sum not exceeding two hundred dollars each, or imprisoned not exceeding six months. This offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense such man or woman shall be severally punished twice as much as the former punishment, and for the third offense, treble, and thus increasing the punishment for each succeeding offense: *Provided*, *however*, That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

Incestuous marriage.

SEC. 133. Marriages between parents and children, including grand parents and grand children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

Lascivious cohabitation with blood relations.

SEC. 134. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

Father cohabiting with his daughter.

SEC. 135. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

Public indecency.

Violation of Sabbath.

Disorderly houses.

Houses of ill-fame.

SEC. 136. If any person shall be guilty of open lewdness or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Bringing obscene books, etc., for sale, etc.

SEC. 137. If any person shall hereafter bring, or cause to be brought or imported into this territory for sale, or shall sell or offer to sell any obscene book, pamphlet, print, picture or engraving, every such person shall, upon conviction, be fined in a sum not less than twenty-five dollars nor more than fifty dollars.

Common gaming houses.

SEC. 138. If any person shall, by himself, herself, servant or other agent, for his or her gain or profit, keep, have, exercise or maintain a common gaming house, table or room, or in any house or place occupied by him or her, procure or permit any persons to frequent or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Gaming.

SEC. 139. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks or at billiards, or with any other article or instrument, thing or things whatsoever, which may be used for the purpose of playing or betting upon or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending shall be fined not exceeeding one hundred dollars and not less than ten dollars.

Tavern keepers permitting gaming.

SEC. 140. Every tavern keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, to be played in his tavern or in any outhouse appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction. It shall be the duty of all justices of the peace, sheriffs, coroners and grand jurors, now in office or hereafter to be appointed, to take notice and give information to the proper authorities of such offenses as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer whose duty it is made to execute the provisions of this chapter, shall neglect to enforce its provisions upon view or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Duty of officers.

Obstruction of public highways.

SEC. 141. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common, street or alley of any town or village, or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts, every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this chapter.

Abatement of nuisance.

Unwholesome provisions. Adulterated liquors.

SEC. 142. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

Illegal banking.

SEC. 143. If any person, number of persons or corporation, in this territory, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or endorse any bond, promissory note or writing, bill of exchange or order, to be used as a general circulating medium, as or in lieu of money or other currency, every such person or persons, or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

Destruction, defacing, etc., public advertisements.

SEC. 144. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy, transcript or extract from or of any law of the United States or of this territory, or any proclamation, advertisement or notification set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding fifty dollars nor less than five dollars, or imprisoned for a term not exceeding one month: *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up shall have expired.

Possession of burglar's implements.

SEC. 145. If any person shall be found having upon him or her any picklock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

Carrying offensive weapons.

And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.

Refusing to join *posse comitatus*, etc.

SEC. 146. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons who, after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in a sum not less than ten dollars nor more than fifty dollars.

Disinterring dead bodies.

SEC. 147. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons, from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

SEC. 148. The preceding section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority, nor shall it be so construed as to prevent any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

Bribery of voters.

SEC. 149. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years.

Laboring on Sunday.

SEC. 150. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called sunday, (works of necessity and charity excepted,) shall be fined, upon conviction thereof, in any sum not exceeding five dollars.

Cases in which prohibition no applicable.

SEC. 151. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water, travelers or persons moving with their families, on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a sabbath, than the first day of the week.

Disturbing peace on Sunday.

SEC. 152. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called sunday, whereby the peace of any private family may be disturbed, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding twenty-five dollars.

Disturbing religious meetings.

SEC. 153. Any person who shall, by menace, profane swearing, vulgar language or any disorderly or immoral conduct, interrupt or disturb any congregation or collection of citizens assembled together for the purpose of worshiping Almighty God, or who shall sell or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles which will tend to disturb any worshiping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction shall be fined in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whisky or any other ardent spirits at his own distillery, store or dwelling house.

Justices to have jurisdiction.

SEC. 154. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, and may on view, or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

CHAPTER XIII.

OFFENSES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

Fraudulent conveyances.

SEC. 155. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them as true, and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels, or other things, before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, he, she or they so offending, shall, on conviction, be fined not exceeding one thousand dollars.

False representations

SEC. 156. If any person, by false representations of his own respectability, wealth or mercantile correspondence and connections, shall obtain credit and thereby defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares or merchandise, or any valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding six months: *Provided*, That this section shall apply only to representations which shall have been reduced to writing, and signed by the party to be charged thereby, prior to the obtaining of such credit.

False pretense.

SEC. 157. If any person or persons shall, knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done: *Provided*, That this section shall not apply to cases of sales of property on credit.

Selling land twice.

SEC. 158. Any person or persons, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

Using false weights and measures.

SEC. 159. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he or she shall be deemed a common cheat, and on conviction, shall be fined not less than two hundred dollars, and imprisoned not exceeding three months.

CHAPTER XIV.

FRAUDULENT AND MALICIOUS MISCHIEF.

Malicious mischief.

SEC. 160. If any person shall willfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment or mill dam, or break or destroy the windows or doors of any dwelling house or other house, or shall set fire to or burn, or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain of any kind, or shall cut down, girdle or destroy any fruit tree, or shade tree, or shall cut, pull down or destroy any gate, post, railing or fence, or shall pull down, burn or destroy any pile or piles of wood, boards or planks, or other lumber, or shall overturn any cart, wagon or other carriage, or shall run them into sloughs, holes or other places, or shall cut loose or set adrift any canoe, ferry flat, skiff, boat or other vessel, for mischief, or shall unlawfully, wantonly, willfully or maliciously kill, wound, disfigure or destroy any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lamb, or any hog, pig or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months, or both.

Destruction of jail, etc.

SEC. 161. If any person shall, willfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Firing woods and prairies.

SEC. 162. If any person or persons shall, at any time hereafter, willfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies or other grounds whatsoever in the inhabited parts of this territory, every person so offending shall, on conviction, be fined in any sum not less than five dollars nor more than one hundred dollars: *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation or enclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors two days notice of such intention: *Provided, also*, That this section shall not be construed to take away any civil remedy which any person may be entitled to for any injury which may be done or received in consequence of such firing.

CHAPTER XV.

CONSTRUCTION OF THIS CODE, AND DUTY OF COURTS AND GRAND JURY.

Grand jury. Duties of, in finding bill.

SEC. 163. After the grand jury is impanneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them; and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment to be supported by good and sufficient evidence, to endorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to endorse thereon "not a true bill;" and shall in either case sign his name as foreman, at the foot of said endorsement; and shall also, in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses upon whose evidence the same shall have been found.

SEC. 164. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to wit:

Oath.

You, as foreman of this inquest, do solemnly swear, (*or* affirm, *as the case may be*,) that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you shall present no person through malice, hatred or ill-will; nor shall you leave any unpresented through fear, favor or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding: so help you God.

And the following oath or affirmation shall be administered to the other jurors, to wit:

The same oath that A— B—, your foreman, has just taken before you on his part, you and each of you shall well and truly keep and observe on your respective parts: so help you God.

Present-ments, when and how made.

SEC. 165. No grand jury shall make presentments of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

Indictment.

SEC. 166. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this code, or so plainly that the nature of the offense may be easily understood by the jury. The commencement shall be in substance as follows:

THE TERRITORY OF NEBRASKA, } *ss.*
——— COUNTY. }

Of the ——— term of the ——— District Court, in the year of our Lord 18—.

The grand jurors, chosen, selected and sworn in and for the county of ———, in the name and by the authority of the Territory of Nebraska, upon their oaths, present, etc. (*Here insert the offense, and the time and place of committing the same, with reasonable certainty.*)

Error in indictment for felony, etc.

SEC. 167. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in the proof thereof, in the name of any county, precinct, city, town, borough, township, town corporate or place mentioned or described in any such indictment; or in the name or description of any person or persons, or body politic or corporate therein alleged or stated to be the owner or owners of any property, real or personal, which shall form the subject of any offense charged therein; or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense, or in the christian name or surname, or both christian name and surname, or other description whatsoever, of any person or persons whomsoever, therein named or described, or in the ownership of any property named or described therein, it shall be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same jury or another jury, as such court shall think reasonable; and after any such amendment, the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had occurred, and the order for amendment shall be endorsed on the indictment: *Provided*, That when any such trial shall be had before another jury, the territory and the defendant shall be respectively entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

Verdict and judgment not to be affected by amendment of indictment.

SEC. 168. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this code, shall be of the same force and effect in all respects as if the same indictment had originally been in the same form in which it was after such amendment was made.

Record to be made after form of amended indictment.

SEC. 169. If it shall be necessary at any time, for any purpose whatever, to draw up a formal record in any case when any amendment shall have been made under the provisions of this code, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

Exception to be made before trial.

What omission shall not be ground for quashing.

SEC. 170. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained for any matter not affecting the real merits of the offense charged in such indictment. No indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

Civil remedy not barred.

SEC. 171. Nothing in this chapter contained shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she or they may have sustained, in consequence of the commission of any criminal offense herein punished; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, however*, The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offense.

Biennial reports.

SEC. 172. It shall be, and is hereby declared to be, the duty of the judges of the supreme and district courts, to make a special report, biennially, to the legislature, of all such defects, omissions or imperfections in this code, as experience may suggest.

Punishment by death. SEC. 173. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until dead, at such time as the court shall direct, not less than fifteen nor more than sixty days from the time the sentence is pronounced, unless, for good cause, the court or governor may prolong the time.

Dissection of body of criminals. SEC. 174. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

Females responsible. Confinement in penitentiary. Persons under eighteen. SEC. 175. This code shall extend to females committing any of the offenses made punishable by this code, although they may not be expressly named. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined; and the court, in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement in the penitentiary for any offense except robbery, burglary or arson; in all other cases, where a penitentiary punishment is or shall be provided, such person, under the age of eighteen years, shall be punished by imprisonment in the county jail for any term not exceeding eighteen months, at the discretion of the court.

Common law offenses, how punished. SEC. 176. All offenses herein defined shall be prosecuted and punished as by this code is prescribed, and not otherwise; and all other offenses may be punished by fine or imprisonment, or both, in the discretion of the court: *Provided*, Such fine shall in no case exceed one hundred dollars, and such imprisonment six months.

Duty of court to affix punishment. SEC. 177. When the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment or fine.

Fines to be paid into county treasury. SEC. 178. All fines imposed by virtue of any of the laws of this territory, for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county, unless otherwise specially directed: *Provided, however*, That nothing in this section contained shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

Benefit of clergy, etc., abolished.

SEC. 179. The benefit of clergy, appeals of felony and trials by battle, shall be and are hereby forever abolished.

Order of commitment until fine and costs are paid.

SEC. 180. The court shall have power, in all cases of conviction under this code, when any fine is inflicted, to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged.

Infamous crimes.

SEC. 181. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, forgery, counterfeiting or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, and of serving as a juror.

CHAPTER XVI.

OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION, AND WRIT OF ERROR.

Bail; duty of court, clerk, and sheriff.

SEC. 182. It shall be the duty of the district court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offense bailable by law, to be endorsed on the process by the clerk; and the sheriff, coroner or other officer who shall arrest the indicted person or persons, shall let such indicted person or persons to bail upon his, her or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process, which recognizance shall be made to the territory of Nebraska, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for said county, to answer the said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

Recognizance of bail.

Capias.

SEC. 183. It shall be the duty of the clerks of the district courts of each county of this territory to issue process of capias for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner and constable of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or, in case of his absence or inability, of the coroner or some one of the constables of the county to which said capias is directed, to arrest the person or persons therein named, and to let him or them to bail where the offense is bailable; or if the offense be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her or their bodies to the jail of the county where said capias is returnable, and deliver such accused person or persons, together with the capias, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners in any jail on his route, for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the board of county commissioners of the county where such indictment shall be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section shall prevent a capias from being issued without such endorsement, returnable instanter, which capias shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed or tried at the term at which the indictment shall be found.

Subpœna. SEC. 184. It shall be the duty of the clerks of the district courts to issue subpœnas, either on the part of the territory or of the accused, in any indictment, directed, as in the preceding section, to any county in this territory. And every witness who shall be duly subpœnaed, and shall neglect or refuse to attend any district court, pursuant to the requisitions of such subpœna, shall be proceeded against and punished for contempt of the court. Attachments against witnesses who live in a different county from that where such subpœna is returnable, may be served in the same manner as capiases are directed in the preceding section to be served, out of the county from which they issue.

Contempts.

Attachment

Venire. SEC. 185. It shall not be necessary to issue a venire in any criminal case. And in all criminal cases where the panel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been selected and sworn or not, it shall be competent for the court to order on their minutes a tales for any number of jurors, not exceeding twenty-four, returnable instanter, out of which persons so ordered to be summoned, it shall be lawful to empannel a jury for the trial of any criminal case; but should the tales ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional talesmen, returnable instanter, until a full jury shall be obtained.

Tales.

Prosecutor's name to be endorsed on indictment in certain cases.

SEC. 186. No bill of indictment for false imprisonment, or willful and malicious mischief, shall be found a "true bill" by any grand jury, unless a prosecutor is endorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty, in which case it shall be stated, at the end of the indictment, how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is endorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting such defendant shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution or not; and whenever the petit jury shall return, with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the prosecuting attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

Copy of indictment and list of jurors and witnesses.

SEC. 187. Every person charged with treason, murder or other felonious crime or misdemeanor, shall be furnished, previous to his trial, with a copy of the indictment, and a list of the witnesses, at his or her request, or the request of his or her counsel.

Arraignment.

SEC. 188. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the territory of Nebraska and the prisoner; and if the clerk should neglect to insert

Plea.

in the minutes the arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

Standing mute.

SEC. 189. In all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute or refusing to plead shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment and execution shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

Plea of guilty.

SEC. 190. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation or mitigation of the offense.

Aggravation or mitigation.

Challenge of jurors.

SEC. 191. Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offense that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the territory, shall be admitted to a peremptory challenge of six jurors, in all cases where the offense charged is punishable with death, and of three jurors in all other cases.

Jury *de mediatate linguæ*.

SEC. 192. In no case shall the right to a trial by jury *de mediatate linguæ*, be allowed in criminal prosecutions.

Crime committed on county line.

SEC. 193. Where an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

Trial, where.

Indictment, upon what

SEC. 194. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the territory only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least twelve of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

evidence to be found.

SEC. 195. All trials for criminal offenses shall be conducted according to the course of the common law, except when this code points out a different mode; and the rules of evidence of the common law shall also, unless changed by this code, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

Common law to govern.

Jury judges of law and fact.

SEC. 196. When the jury shall retire to consider of their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and, to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, that he will not speak to them himself, except to ask them if they have agreed upon their verdict, nor suffer any other person to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however*, That in any cases of misdemeanor only, if the prosecuting attorney, and the person on trial, by himself or counsel, shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate, it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict so delivered to the clerk as the lawful verdict of any such jury.

Officer attending jury to be sworn.

SEC. 197. If any officer sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink, (except water,) or if any person, not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending shall be punished for a contempt of the court, by fine or imprisonment, or both, in the discretion of the court.

Violation of his duty by officer attending jury, penalty.

SEC. 198. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified

Person convicted to

pay costs of prosecution. in this code, or of any offenses at common law, the court shall give judgment that the offender or offenders, so convicted, shall pay the costs of the prosecution.

Lien, from what time to attach. SEC. 199. The property, real and personal, of every person who shall be convicted of any of the offenses punished by this code, shall be bound, and a lien is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution. Execution. And it shall be the duty of the clerk of the district court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases; in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be; which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property, under such execution, that the body is in custody for said fine and costs.

Replevy of fine and costs. SEC. 200. It shall and may be lawful for any person or persons, convicted of any criminal offense, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the district court, to the people of this territory, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same; and upon the breach thereof, the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements, of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, no execution shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this code made a part of the punishment; in that case such convicted person or persons shall be discharged from his or her or their imprisonment, at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

Execution may be issued to any county.

SEC. 201. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this territory.

Release of fine and costs in certain cases.

SEC. 202. Whenever it shall be made satisfactorily to appear to the district court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offense, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs; which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment.

Surrender by bail.

SEC. 203. In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, at any time before judgment is rendered upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken; and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons, so charged as aforesaid, into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

Bill of exceptions.

SEC. 204. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exceptions tendered to the court during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exceptions; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

Writs of error.

SEC. 205. The party aggrieved, by manifest and material error appearing of record in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of the opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof in vacation; and if, after inspecting such transcript, the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted, by order endorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

Supersedeas

SEC. 206. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course; but no writ of error shall be a supersedeas, unless the supreme court, or one of the justices thereof in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error, then the writ shall be granted by order endorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall at the time be in custody, under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the territory, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe;, which recognizance shall be conditioned that the prisoner will appear at the next district court to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writs of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken shall be returned to the next district court and there entered of record, and such proceedings may be thereon had, in case of a breach of the condition of such recognizance, as shall be according to the course of the common law: *Provided, however*, That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court, by virtue of this section; the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Change of venue.

SEC. 207. When any defendant in any indictment or information in any court in this territory, shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or the minds of the inhabitants of the county wherein the trial is pending are prejudiced against him, such party may apply to the court in term time or the judge thereof in vacation, for a change of venue, by petition setting forth the cause of such application, verified by affidavit, reasonable previous notice having been given to the prosecuting attorney prosecuting for the county, and the court or judge may, in his discretion, award a change of venue to the next nearest county where the cause complained of does not exist; and in case the applicant be in custody or confined in jail, the court or judge shall make an order to the sheriff, to remove the body of such applicant to the common jail of the county to which such venue is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined or held in custody, not more than three days next before the first day of the term of said court; and the sheriff shall obey such order accordingly, and shall endorse on such warrant of commitment the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper of the jail of the proper county, who shall receive the same and give to the sheriff a receipt therefor, and shall take charge of and safely keep the prisoner in the same manner as if he originally had been committed to his custody: *Provided*, That there shall be but one change of venue in any criminal case, and that no change of venue shall be granted until after indictment found or information filed.

Changes of venue not to be granted after first term of court except in certain cases.

SEC. 208. Changes of venue shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked, have arisen or come to his or her knowledge subsequent to the term at which the application might have been made, and shall also have given to the opposite party ten days previous notice, of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

Duty of judge and clerk of court on change of venue.

SEC. 209. When any judge shall award a change of venue in vacation, in any criminal cause, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writing, ordering and directing the change of venue, and such clerk shall file the same in his office, and shall make out a copy thereof and a full transcript of the record and proceedings in such case, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and pertaining to and forming a part of the record, including the indictment and recognizance of the party and all witnesses, and the clerk of the court to which such cause is certified, shall file the same, and the cause shall be docketed by such clerk and shall be proceeded in and determined by the court, in all things as well before and after judgment, as if it had originated therein.

Parties, witnesses, etc., to attend according to change.

SEC. 210. When the venue shall be changed in any criminal case, the parties, witnesses and all others who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.

Duty of prosecuting attorney.

SEC. 211. When the venue is changed in term time, in a criminal case, the prosecuting attorney shall have all witnesses on the part of the prosecution recognized to appear at the court, on the first day thereof, where the trial is to be had.

SEC. 212. In all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court; and all costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury where the crime shall have been committed, if the defendant be unable to pay the same.

Duty of sheriff.

CHAPTER XVII.

LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

SEC. 213. No person or persons shall be prosecuted, tried or punished, for any offense denominated by the common law, felony, (treason, murder, arson and forgery excepted,) unless the indictment for the same shall be found by a grand jury, within three years next after the offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same, shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture: *Provided*, That nothing herein contained shall extend to any person fleeing from justice: *Provided, also*, That where any suit, information or indictment, for any crime or misdemeanor, is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *And provided, also*, That where any indictment, information or suit shall be quashed, or the proceedings on the same set aside or reversed, on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information or suit, for the same offense.

Limitation.

CHAPTER XVIII.

GENERAL PROVISIONS.

Conservators.

SEC. 214. The judges of the district courts in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offenses, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this territory, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever, and also all such persons as are not of good fame; and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she has used threats, as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior toward all the people of this territory, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said district court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed, are in jail at the sitting of such district court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard to the safety of the citizens of this territory.

Their powers.

Recognizance to keep the peace, etc.

SEC. 215. When any felonious offense shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises shall be punished by fine in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

Fresh pursuit.

SEC. 216. It shall be lawful for any of the aforenamed judges or justices of the peace, upon oath or affirmation being made before him that any person or persons have committed any criminal offense in this territory, or that a criminal offense has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer or person charged with the execution thereof to arrest the person or persons so charged, and bring him, her or them before the officer issuing said warrant, or, in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offense, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending; and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons so charged to jail, admit him, her or them to bail, or discharge him, her or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offense punishable with death. All recognizances taken in pursuance of this section shall require the accused to appear at and on the first day of the next district court, or if the court be then sitting, on some day of the term, to be therein designated.

Preliminary examination.

Recognizances, what to require.

SEC. 217. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare anything material to prove the offense charged, to appear before the next district court on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated (and, in all cases, at the same time and place as the person or persons accused by said witnesses shall be bound to appear), to give

Witnesses to be recognized.

evidence touching the offense so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance or be otherwise discharged by due course of law.

Recognizance, how taken.

SEC. 218. All recognizances that have any relation to criminal matters, shall be taken to the territory of Nebraska, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace or other officer taking the same, and delivered to the clerk of the district court on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

Bail.

SEC. 219. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offense punishable with death, or for not entering into a recognizance to appear and testify, any judge or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to endorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

Penalty if prosecutor fail to appear.

SEC. 220. Whenever any person has been bound, or shall be bound by any recognizances to keep the peace or for his good behavior, and for appearance of the party in the district court, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that a prosecution was commenced maliciously, without reasonable or probable cause, the court may, in its discretion, give judgment against the prosecutor for the costs of the prosecution and defense.

Warrant.

SEC. 221. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offense, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the territory; and it shall be the duty of any sheriff, coroner or constable, into whose hands any such warrant shall come, to execute the same within any county in which such offender may be found, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

Judge or justice may authorize person to execute warrant.

SEC. 222. Any judge or justice of the peace, issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the territory by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county; and all sheriffs, coroners and constables, and others, when required, in their respective counties, shall aid and assist in the execution of such warrant.

Officers may take prisoners through other counties, etc.

SEC. 223. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offense be bailable, or be otherwise discharged, by due course of law.

Seal unnecessary.

SEC. 224. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offense, or warrant of commitment, or search warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal was affixed. And no person shall be discharged on habeas corpus from

No person to be discharged on habeas corpus for defect of legal precision.

his imprisonment, merely by reason of defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such habeas corpus shall, in all such cases, proceed and determine as if the mittimus had all legal and technical form: *Provided,* Sufficient appear on the face of the mittimus to ascertain for what crime or offense such prisoner or prisoners shall have been committed.

Search warrants.

SEC. 225. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property are or is concealed in any dwelling house, out house, garden, yard, or other place or places, to issue a warrant, under his hand, commanding every such dwelling house or place to be searched in the day time; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by said judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods, or persons in whose possession such goods shall have been found, shall be seized, and an action shall not be commenced against the person for the recovery thereof, within one month after a district court shall have been held after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

Mittimus.

SEC. 226. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

When accused person shall demand copy of mittimus, sheriff to endorse names of witnesses.

SEC. 227. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall endorse on said copy the names of the witnesses written thereon as aforesaid; and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to endorse the name of said witness or witnesses on a copy of said commitment, each justice, judge, sheriff or jailer offending in the premises shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name and for the use of any person who shall sue for the same in any court of record.

Habeas corpus.

SEC. 228. Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpœna to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable; it shall be the duty of such sheriff to serve said subpœna, if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpœna, to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

Duty of judge or court on hearing.

SEC. 229. On the hearing of any habeas corpus issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense mentioned in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not, and upon which hearing, said judge or court may either recommit, bail or discharge the prisoner, according to the facts of the case.

Code, how to be construed.

SEC. 230. This code and every other law upon the subject of crime, which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words, upon pretense that he has offended against its spirit.

When rules of common law to be resorted to.

SEC. 231. When the definition of an offense made penal by the law of this territory is merely defective, the rules of the common law shall apply, and be resorted to, for the purpose of aiding in the interpretation of such penal enactment.

Special provision to control.

SEC. 232. In the construction of this code, each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

Penalty prescribed by one law and altered by a subsequent one.

SEC. 233. When the penalty of an offense is prescribed by one law, and is altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offense was committed, and, if convicted, punished under that law, except that when by the provisions of the second law the punishment of the offense is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offense was committed.

Repealing statute.

SEC. 234. When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in the next preceding statute shall apply.

Repeal of a penal law exempts from punishment except otherwise declared.

SEC. 235. The repeal of a penal law when the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provisions of such repealed law, unless it be otherwise declared in the repealing statute.

Penalty not to be cumulative.

SEC. 236. No penalty affixed to an offense by one law shall be considered as cumulative of penalties under a former law, and in any case where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

Definition of an offense changed.

SEC. 237. If an offense be defined by one law, and by a subsequent law the definition of such offense is changed, no such change or modification shall take effect as to the offenses already committed, but all the offenders against the first law shall be tried, and their guilt or innocence determined, in accordance with the provisions thereof.

Offenses committed, etc., under previous laws, not affected by their repeal.

SEC. 238. No offense committed, and no fine, forfeiture or penalty incurred under existing laws previous to the time when this code shall take effect, shall be affected herein by the repeal of any such existing laws, but the punishment of such offenses, the recovery of such fines and the forfeitures shall take place as if the laws repealed had still remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by the provisions of this code, such provisions shall apply to and control any judgment to be pronounced after this code shall take effect, for any offense committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

Persons trespassing on timber lands guilty of misdemeanor.

SEC. 239. If any person or persons knowingly or willfully enter upon the land of another, and remove therefrom any timber or wood, or willfully cut, injure or remove any timber, tree or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public ground of any town or any land held by this territory, for any purpose whatsoever, or any burying ground, or any school land, shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace of the proper county, shall be fined in any sum not less than thirty dollars nor more than one hundred dollars, one-half of said fine to be paid into the school fund, and the other half to be paid to the informer.

Penalty one-half to school fund and one-half to informer.

Imprisonment until fine paid.

SEC. 240. Any person found guilty of a misdemeanor, as defined by the preceding section, and fined by any justice of the peace, shall be imprisoned in the county jail until such fine be paid.

Jury.

SEC. 241. If upon the trial of any person arrested under the provisions of this chapter, the defendant shall demand a trial by jury, the justice of the peace before whom such trial is being had, may issue a venire and proceed to empannel a jury to try said cause.

CHAPTER XIX.

CUSTODY OF CONVICTS.

Convicts where to be imprisoned before erection of a penitentiary

SEC. 242. Until the erection of a territorial penitentiary, it shall be the duty of the district judge, or judge before whom any conviction under the provisions of this criminal code is had, to direct the sheriff of the county thereof to convey the convict or convicts safely to any county jail in the territory that may be designated for his confinement by said court or judge, and it shall likewise be the duty of said sheriff to safely keep in custody and deliver said convict or convicts to the jailer thereof according to the order of the said court or judge or judges. The jailer of the county jail thus designated by the court as aforesaid, shall receive of the sheriff and keep said convict or convicts closely confined in said jail or at hard labor, until discharged by due course of law.

Penalty on sheriff and jailer.

SEC. 243. The sheriff or jailer refusing or omitting to comply with the order of the court aforesaid, or the provisions of this chapter, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than six months nor more than one year, at the discretion of the court before whom the conviction is had.

Convict escaping.

SEC. 244. If any person confined in a place of confinement for any term less than for life, or in lawful custody going to the place of confinement, shall break such prison or custody, and escape therefrom, he shall upon conviction be punished by confinement for a term not exceeding five years, to commence from the expiration of the original term of imprisonment.

Fines and forfeitures, how to be paid.

SEC. 245. All fines and forfeitures accruing by virtue of any of the provisions of this code, shall be paid into the county treasury, one-half thereof for the use of the school fund, to be distributed as other moneys, and the other half for the use of the respective counties where the prosecution or prosecutions are had: *Provided*, That wherever in this code moneys arising from certain fines and forfeitures are specially appropriated, such special and different appropriation shall prevail and be carried into effect.

CHAPTER XX.

TO PREVENT FRAUD IN WAREHOUSEMEN AND OTHERS.

Fraudulent receipts prohibited.

SEC. 246. No warehouseman, wharfinger or other person, shall issue any receipt or voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide* received into store by such warehouseman, warfinger or other person, and shall be in store and under his control at the time of issuing such receipt.

No person to issue receipts on property not his own.

SEC. 247. No warehouseman, wharfinger or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

No second receipt to be issued while first outstanding.

SEC. 248. No warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

Transfer of goods prohibited without consent of person holding receipt.

SEC. 249. No warehouseman, wharfinger or other person, shall sell, or encumber, ship, transfer or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt.

Penalty, fine and imprisonment.

SEC. 250. Any warehouseman, wharfinger or other person, who shall violate any of the foregoing provisions of this chapter, shall be deemed a cheat, and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person aggrieved by the violation of any of the provisions of this chapter, may have and maintain a civil action against the person or persons violating any of the foregoing provisions of this chapter, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under this chapter or not.

CHAPTER XXI.

FRAUDULENT ISSUE AND TRANSFER OF STOCK IN CORPORATIONS.

False issue and transfer of stock.

SEC. 251. Every president, cashier, treasurer, secretary, or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall willfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or semi-related certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling or pledging of which such president, cashier, treasurer, or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony, and every such person or persons shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Liable to indictment.

SEC. 252. Every president, cashier, treasurer, secretary, or other officer, and every agent, attorney, servant or employee of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, and with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent or semi-related certificate or other evidence of ownership, of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction, shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

CHAPTER XXII.

FUGITIVES FROM JUSTICE.

Governor may appoint agents.

SEC. 253. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any foreign government, any fugitive from justice, charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor and paid out of the territorial funds.

Demand.

SEC. 254. Whenever a demand is made upon the governor of this territory, by the executive of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery of any person charged in such state or territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this territory, he shall issue his warrant under the seal of the territory, authorizing the agent who makes such demand either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this territory at the expense of such agent, and may also by such warrant, require all peace officers to afford needful assistance in the execution thereof.

Magistrate may issue warrant.

SEC. 255. If any person be found in this territory, charged with any crime committed in any other state or territory, and liable by the constitution and laws of the United States, to be delivered over upon the demand of the governor thereof, any magistrate may, upon complaint on oath setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to arrest such person.

Surety to be given by the accused party.

SEC. 256. If upon examination it appears that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the governor, he shall, if not charged with murder, be required to enter into an undertaking, with sufficient surety in a reasonable sum, to appear before such magistrate at a future day (allowing reasonable time to obtain the warrant from the governor) and abide the order of such magistrate in the premises.

When committed to prison.

SEC. 257. If such person does not give bail, or if he is charged with the crime of murder, he must be committed to prison and there detained until such day, in like manner as if the offense charged had been committed within this territory.

Forfeiture.

SEC. 258. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking, is a forfeiture thereof.

When discharged.

SEC. 259. If such person appear before the magistrate upon the day ordered, he must be discharged unless he is demanded by some person authorized by the warrant of the governor to receive him, unless the magistrate see good cause to commit him, or require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor.

When accused may be taken into custody

SEC. 260. When the person so charged be bound to appear, be committed or discharged, any person authorized by the warrant of the governor, may at any time take him into custody, and the same is a discharge of the undertaking if there be one.

Costs and charges.

SEC. 261. The complainant in any such case is answerable for all costs and charges, and for the support in jail of any person so committed, and the magistrate, before issuing his warrant or hearing the cause, must require the complainant to give security for the payment of all such costs, or may require them in advance.

Sheriff or coroner to give notice to governor when a murder has been committed.

SEC. 262. Whenever it shall be brought to the knowledge of the coroner or sheriff of any county in this territory, that a murder has been committed within their respective counties, and the person or persons committing such murder are unknown, or if known have fled from justice, it shall be the duty of the coroner or sheriff to make the same known to the governor of this territory, together with such facts as may have come to his knowledge, going to show by whom such murder was committed and the whereabouts of the murderer.

Governor shall offer a reward for arrest of the murderer.

SEC. 263. Upon the receipt of the information as prescribed in the preceding section, the governor of the territory shall issue his proclamation, offering such reward, not exceeding two hundred dollars, as he shall deem proper for the arrest of the person or persons committing said crime, and the delivery of said person or persons to the sheriff or jailer of the county where said crime was committed.

In what case the person making the arrest shall secure the reward.

SEC. 264. Upon the trial of any person for whom such reward has been offered, if the presiding judge shall, under his hand and seal of the court, certify to the governor that the person arrested and indicted committed the acts charged in the indictment, the person or persons making the arrest shall be entitled to the reward.

Reward, how paid.

SEC. 265. The governor, upon the presentation of the certificate, as provided for in the preceding section, shall give the person holding said certificate, an order on the auditor of the territory, who shall issue a warrant for the amount.

CHAPTER XXIII.

EXCEPTIONS AND WRITS OF ERROR IN CRIMINAL CASES.

Exception to the opinion of the court, etc., allowed in criminal cases.

SEC. 266. Exceptions taken to opinions or decisions of any court in this territory, overruling motions in arrest of judgment, for new trials, or for continuances or change of venue, shall be allowed in criminal cases and in penal and *qui tam* actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases.

CHAPTER XXIV.

DEFINITIONS.

SEC. 267. The general terms "whoever," "any person," "any one," and the relative pronouns "he" and "they," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" is used to signify a male person of any age, and the word "woman" a female person of any age.

General terms.

SEC. 268. The use of any word expressive of the relationship, state, condition, office or trust of any person, as of parent, child, ascendant, descendant, minor, infant, ward, guardian, or the like, or of the relative pronouns he or they in reference thereto, includes both males and females.

Words expressive of relationship

SEC. 269. The use of the singular number includes the plural, and the plural the singular, and the words used in the masculine gender include the feminine also, unless by reasonable construction it appears that such was not the intention of the language.

Singular and plural number.

SEC. 270. Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person," or any other general term, is used to designate the party whose property is intended to be protected, the provisions of such penal laws and the protection thereby given, shall extend to the property of the territory, or of any county, and of all public or private corporations.

"Persons" or any general term.

SEC. 271. The word "accused" is intended to refer to any person who, in any legal manner, is held to answer for any offense at any stage of the proceedings, or against whom complaint in a lawful manner is made, charging the commission of an offense, including all proceedings, from the order for arrest to the final execution of the law, and the word "defendant" is used in the same sense.

"Accused."

SEC. 272. A criminal action, as used in this code, means the whole and any part of the procedure which the law provides for bringing offenders to justice, and the terms "prosecution," "criminal prosecution," "accusation" and "criminal accusation," in the same sense.

Criminal action.

SEC. 273. An "accused person," is termed a convict after final condemnation by the highest court of resort which by law has jurisdiction of his case, and to which he may have thought proper to appeal.

"Accused person" when termed a convict

SEC. 274. The term "criminal process" is intended to

"Criminal process."

signify any capias, warrant, citation, summons, attachment; or other written precept or order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used.

"Writing" and "oath." SEC. 275. The word "writing" includes printing; the word "oath" includes affirmation.

"Signature." SEC. 276. The word "signature" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person and the mark is made near thereto by the person unable to write his name.

Terms not defined how to be taken. SEC. 277. Except where a word, term or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

Civil rights under former acts. SEC. 278. All civil rights which have accrued under any former act or law of this territory are hereby reserved and continued, and the same may be prosecuted to judgment and enforced by execution and satisfaction, and all violations of the criminal law heretofore in force may be proceeded with by indictment and trial, or other lawful or proper proceeding or proceedings, to conviction and punishment, the same as if this criminal code had not been enacted.

CHAPTER XXV.

HABEAS CORPUS.

Habeas corpus. SEC. 279. If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this territory, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself, or by any person on his or her behalf, to any one of the judges of the district court, or to any probate judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same apear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the

When allowed.

district court, or by the probate judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons, who detain such prisoner.

Person detained to be conveyed before judge

SEC. 280. It shall be the duty of the officer or person to whom such writ shall be directed, to convey the person or persons so imprisoned or detained and named in such writ, before the judge allowing the same, or, in case of his absence or disability, before some other judge of the same court, on the day specified in said writ, and shall make due return of said writ, together with the day and cause of the caption and detention of such person, according to the command thereof.

Duty of judge.

SEC. 281. When the said judge shall have examined into the cause of the caption and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith discharge such prisoner from said confinement. And in case the person or persons applying for such writ shall be confined or detained in a legal manner, on a charge of having committed any crime or offense, the said judge shall, at his discretion, commit, discharge or let to bail, such person or persons, and if the said judge shall deem the offense bailable, on the principles of law, he shall cause the person charged as aforesaid to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offense charged considered, conditioned for his appearance at the next court where the offense is cognizable; and said judge shall certify his proceedings, together with the recognizance, forthwith, to the proper court; and if the person or persons charged as aforesaid shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

Penalty for neglect or refusal to obey writ.

SEC. 282. If any person to whom such writ of habeas corpus shall be directed as aforesaid, shall neglect or refuse to obey or make return of the same according to the command thereof, or shall make a false return of said writ, or upon demand made by the prisoner, or any person in his or her behalf, shall refuse to deliver to the person demanding, within six hours after the demand thereof, a true copy of the warrant or commitment or detainer of such prisoner, every person so offending shall, for the first offense, forfeit to the party aggrieved the sum of two hundred dollars, and for the second offense the sum of four hundred dollars, and shall, if an officer, be incapable to hold his said office.

Penalty if clerk refuse to issue writ.

SEC. 283. If any clerk of the district court shall refuse to issue such writ, after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved the sum of five hundred dollars.

Persons set at large not to be again imprisoned.

SEC. 284. Any person who shall be set at large upon any habeas corpus, shall not be again imprisoned for the same offense, unless by the legal order or process of the court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offense. And if any person shall knowingly, contrary to this chapter, recommit or imprison, or cause to be recommitted or imprisoned for the same offense or pretended offense, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved five hundred dollars, any colorable pretense or variation in the warrant or commitment notwithstanding.

Penalty.

Prisoners not to be removed from custody of one officer to another, unless, etc.

SEC. 285. If any person of this territory shall be committed to prison, or be in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the territory, for trial, or in case of fire, infection or other necessity. And if any person, after such commitment, shall make out or sign, or countersign, any warrant for such removal contrary to this chapter, he or she shall, for every such offense, forfeit to the party aggrieved five hundred dollars.

Penalty.

Accessories before the fact to capital felonies shall not be bailed, etc.

SEC. 286. When any person shall appear to be committed by any judge or justice, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this chapter, or in any other manner than as if this chapter had not been enacted.

Citizens not to be sent out of the territory for crime committed in it, except, etc.

SEC. 287. No citizen of this territory, being an inhabitant or resident within the same, shall be sent a prisoner to any place whatever out of the territory, for any crime or offense committed within this territory, except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same, or any of them, and shall recover triple costs besides damages, which damages, so to be given, shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this chapter, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this territory: *Provided*, That if any citizen of this territory, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed, any treason, felony or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she or they may be sent to the state or territory having jurisdiction of the offense.

Remedy and penalty for so doing.

Fugitives from other states may be sent out of the territory.

SEC. 288. The penalties in this chapter made recoverable, shall be recovered by the party aggrieved, his or her executors or administrators, by civil action in any court having cognizance of the same: *Provided*, That no person shall be sued or molested for any offense against this chapter, unless within two years after the time when such offense shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decease of the person imprisoned, or his or her delivery out of prison. And in every such action it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

Penalties specified in this chapter to be recovered by civil action.

Pleading, etc.

SEC. 289. If any person shall be committed to prison, or be in custody of any officer for any criminal matter, by virtue of any warrant or commitment of any justice of the peace of this territory having jurisdiction of such criminal matter, such person shall not be discharged from such imprisonment or custody by reason of any informality or defect of such warrant or commitment: *Provided*, Such warrant or commitment shall show substantially a criminal matter for which such justice of the peace had jurisdiction so to arrest or commit.

Informalities in warrant or commitment, no ground for discharge of prisoner.

SEC. 290. In case of confinement, imprisonment or detention by any person not a sheriff, deputy sheriff, coroner, jailer, constable or marshal of this territory, nor a marshal or other like officer of the courts of the United States, the writ of habeas corpus shall be in the form following:

Form of writ when the prisoner is not in the custody of an officer.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

To the Sheriff of our several Counties, Greeting:

We command you, that the body of ——— of ———, by ——— of ——— imprisoned and restrained of his liberty, as it is said, you take and have before ———, a judge of our ——— court ———, or, in case of his absence or disability, before some other judge of the same court at ———, forthwith to do and receive what our said judge shall then and there consider —— concerning him in his behalf, and summon the said ——— then and there to appear before our said judge to show the cause of the taking and detaining the said ———; and have you there this writ, with your doings thereon.

Witness ———, at ———, this —— day of ——, in the year ——.
[SEAL.] ———.

How and where served.

SEC. 291. Such writ may be served in any county by any sheriff of the same or any other county.

How returned.

SEC. 292. When such writ shall be issued by a court in session, if such court shall have adjourned when the same is returned, it shall be returned before any judge of the same court, and if such writ is returned before one judge at a time when the court is in session, he may adjourn the case into the court there to be heard and determined.

How person having charge of prisoner may be designated.

SEC. 293. The person having the custody of the prisoner may, in all writs of habeas corpus issued under this chapter, be designated by his name of office, if he have any, or by his own name; or if both such names are unknown or uncertain, he may be described by an assumed appellation, and any person who is served with the writ, shall be deemed the person intended thereby.

How prisoner may be designated.

SEC. 294. The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

What shall be stated in the return of the writ.

SEC. 295. In cases other than those provided for by the first section of this chapter, the person who makes the return shall state therein, and in the cases provided for in this chapter, the person in whose custody the prisoner shall be found, shall state in writing to the court or judge before whom the writ is returned, plainly and unequivocally—

First. Whether he has or has not the party in his custody or power, or under restraint.

Second. If he has the party in his custody or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant or other process if any, upon which the party is detained.

Third. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

Must be signed and sworn to.

SEC. 296. The return or statement shall be signed by the person making it, and it shall also be sworn to by him, unless he is a public officer, and shall make the return in his official capacity.

SEC. 297. Upon the return of any writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody, under any warrant or commitment in pursuance of law, the return shall be considered as *prima facie* evidence of the cause of detention; but if the person so imprisoned or detained is restrained of liberty by any alleged private authority, the return of said writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case arising upon a writ of habeas corpus; the court or judge determining the same, shall make such order as to costs as the case may require.

Effect of the return as evidence.

Cost.

SEC. 298. When any writ of habeas corpus shall have been allowed, the court or judge to which the same shall be returned, or into which it shall be adjourned, shall, for good cause shown, continue the said cause, and shall make order for the safe keeping of the person imprisoned, or detain him, as the nature of the case may require.

Adjournment of cause.

SEC. 299. The proceedings upon any writ of habeas corpus shall be recorded by the clerks and judges respectively, and may be reviewed and writs of error and certiorari may issue as in other cases now provided by law.

Record of writs, error, etc.

SEC. 300. The probate judges of the several counties of this territory shall be allowed the sum of two dollars for every allowance of the writ of habeas corpus, and the hearing and determining of the case upon the return of such writ, which sum, together with the fees of the clerk, sheriff and witnesses in the case, shall be taxed by such probate judge on his return of his proceedings on such writ, and the same when the person brought before such judge on such writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail, or shall be remanded to custody by such judge, shall be taxed and collected as part of the original cost in such case, but when such person shall be wholly discharged by such judge, such costs shall be taxed to the territory and paid out of the county treasury of the proper county upon the order of the county commissioners: *Provided*, That no person or officer shall have the right to demand the payment in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on habeas corpus, when such writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

Fees, payment, etc.

CHAPTER XXVI.

CUSTODY OF CONVICTS.

When prisoners in custody may be conveyed to jail of other county.

SEC. 301. Whenever it shall be lawful and necessary to confine any prisoner, in custody previous to conviction upon a criminal accusation, or in custody for contempt or alleged contempt of court, or upon an attachment by order of a court or judge, or otherwise in lawful custody, and there shall be no secure jail in the proper county, the officer or person having him in such custody may convey him to and confine him in the jail of any county in this territory, or other secure and convenient place of confinement in this territory, to be procured by such officer or person having such prisoner in custody.

Cost of maintaining prisoner paid by territory.

SEC. 302. The cost of keeping and maintaining any prisoner after his conviction of an offense punishable by imprisonment in the penitentiary, wheresoever he may be kept and confined, shall be paid by the territory according to the rate which may be established by law at the time when such services may be rendered or expenses incurred: *Provided*, The rate so established shall not be construed to apply to any contract which the governor may make for the confinement of convicts in the penitentiary of a state.

Auditor to allow account.

SEC. 303. The auditor of the territory shall allow the account for the costs provided for in the last section and draw warrants upon the treasury therefor, upon being furnished with a certified copy of the judgment or sentence of the court under which such convict is imprisoned, and an account verified by affidavit, showing where and how long such convict has been kept pursuant to such sentence.

Costs previous to conviction, etc., paid by county.

SEC. 304. The cost of keeping and maintaining any prisoner previous to his conviction of an offense punishable by imprisonment in the penitentiary, or either before or after his conviction of an offense not so punishable, or when he shall not be convicted of any offense, shall be paid by the county in which the offense may be committed or alleged to have been committed.

When county attached to another, liable for costs.

SEC. 305. Every county attached for judicial purposes to another county, shall be liable for costs heretofore or hereafter incurred in the prosecution of any person accused of the commission of an offense within the county so attached, and for costs in any other judicial proceeding originating therein, to the same extent and on the same conditions as if such prosecution were carried on or such proceedings were had within such county so attached: *Provided*, That the fees of jurors shall be paid by the county from which they may be drawn.

SEC. 306. The costs to be paid under this chapter by any county shall be such as may be provided by law at the time when the services may be rendered or the expenses incurred; and shall be allowed by the commissioners of the proper county upon the certificate of the clerk of the district court that such costs have been taxed by him or by the court, and are chargeable upon such county.

Costs allowed, etc., by commissioners upon certificate of clerk.

SEC. 307. The governor of this territory is hereby authorized to contract with the proper authorities of any of the states of this Union, having a penitentiary or state prison for the confinement in such prison or penitentiary at hard labor, or solitary confinement, as the sentence may be, of any person sentenced to imprisonment in the penitentiary, by any of the courts of this territory, for any crime hereafter committed, and it shall be lawful for any court passing sentence upon any one convicted of a crime, the punishment of which is imprisonment in the penitentiary, to direct as part of such sentence, that such convict shall be imprisoned in the state prison or penitentiary of the state with which such contract may be made: *Provided*, That any order so made as part of a sentence passed after the taking effect of this chapter, and before the completion of such contract by the governor, shall have the same force and effect as if made after the completion of such contract.

Governor authorized to contract with proper authorities of other states for use of penitentiary

SEC. 308. As soon as any such contract shall be made, the said convicts who may then be under sentence as aforesaid, may be transported under the warrant of the governor by the sheriff of the proper county, to the place designated therein, and shall there be delivered to the proper officers.

Convicts transported by sheriff of the proper county.

SEC. 309. The governor shall transmit with his warrant a certified transcript of the judgment of the court sentencing such convict.

Transcript of judgment

SEC. 310. The expenses incurred under the foregoing provisions of this chapter shall be paid out of the territorial treasury upon the warrant of the governor.

Expenses paid by territory.

SEC. 311. In all cases where any person has heretofore been or shall hereafter be sentenced to hard labor in the penitentiary, and, for want of a penitentiary, has been or may be, by the court passing such sentence, directed to be imprisoned in any county jail, such labor shall be performed under the direction of the county commissioners of such county, who may adopt such rules, regulations and

Persons sentenced to hard labor in penitentiary but directed to be imprisoned in county jail.

orders thereto, as they may be deem best, and the sheriff or other officer having the custody of such convicts shall be governed thereby.

County jail declared to extend to quarries, roads, etc.

SEC. 312. For the purpose of enabling the county commissioners of any county in this territory to employ, in a profitable manner, all persons who have heretofore been, or who may hereafter be sentenced, as provided for in the preceding section, said commissioners, or a majority of them, shall have power to designate the place where the person so convicted shall work, and under whose custody such convict shall be while so at work. The county jail in all such cases is hereby declared to extend to any stone quarry or quarries, road or roads, or other place or places within the limits of the county, at which the convicts may be advantageously employed.

Discretion of court in passing sentence.

SEC. 313. Whenever any of the courts of this territory shall hereafter pass sentence upon any person convicted of a crime, the penalty of which is confinement in the penitentiary, the court may either order such person to be imprisoned, according to the provisions of section three hundred and seven, or, at their discretion, section three hundred and eleven of this code.

Duty of commissioners.

SEC. 314. It shall be the duty of the county commissioners to collect the proceeds of all such labor as may be performed under their direction as aforesaid, and after first paying the board of such convicts and the expenses incident to such labor, to pay the balance into the county where such persons may be confined.

CHAPTER XXVII.

PENALTY FOR ASSAULT AND BATTERY, AND JURISDICTION OF JUSTICES THEREIN.

Persons guilty of assault and battery, etc., how punished.

SEC. 315. If any person shall be guilty of an assault, or of an assault and battery, or of an affray by fighting or beating at fisticuffs, such person shall, upon conviction before any justice of the peace of the county in which the offense may be committed, be fined in any sum not more than one hundred dollars, or imprisoned in the county jail of the county not exceeding three months, or both fined and imprisoned as aforesaid.

Duty of justice to issue warrant and pass sentence.

SEC. 316. Upon complaint being made against any person for either of the offenses in the preceding section named, it shall be the duty of the justice of the peace before whom such complaint is made, to issue his warrant for the arrest of the person so charged, as provided by section two hundred and sixteen of this code, and the justice of the peace before whom the person so charged may be brought, shall thereupon proceed to hear the proofs, and if, upon all the testimony, he shall find the accused to be guilty of the offense so charged, the said justice shall pass such sentence as the circumstances may require, within the limitations prescribed in the preceding section.

When sentence passed, justice shall render judgment, etc.

SEC. 317. When sentence shall be passed in pursuance of this chapter, the justice of the peace shall render judgment for the costs of prosecution, and for the fine, if any, which may be assessed in the name of the territory, and thereon issue execution for the collection of the same as in civil cases, or he may, in his discretion, direct that the person convicted shall be committed to jail until the fine and costs be paid.

Appeal allowed.

SEC. 318. An appeal to the district court shall be allowed to the defendant upon his entering into bond, with good and sufficient sureties, to be approved by the justice, in a sum equal to double the amount of the fine and costs, and in no case to be less than one hundred dollars, conditioned that the defendant will appear at the next term of the district court and abide the judgment of the court therein, and pay any fine and costs which may be adjudged against him, and thereupon all further proceedings before the justice shall be suspended, and he shall certify his proceedings to the district court in the same manner as may be required in civil cases.

Case entered in criminal calendar, and how tried.

SEC. 319. In all cases of appeal as provided for in the last section, the clerk of the district court shall, upon receiving the transcript of the proceedings before the justice, enter the case in the calender of criminal cases, and thereupon the same course shall be pursued as in other criminal cases begun by indictment in said court, except that no indictment or plea shall be necessary, and the court shall thereupon have the same power, upon trial and conviction, to pass sentence within the limitations prescribed in the first section of this chapter as is herein conferred originally upon justices of the peace.

Justice may require the complainant to acknowledge himself responsible for costs.

SEC. 320. Before issuing any warrant under this chapter, the justice before whom complaint may be made, may, in his discretion, require such complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment shall be entered on the docket of the justice; and in case the justice shall consider such complainant irresponsible, such justice may, in his discretion, refuse to issue any warrant unless the complainant shall in addition procure some responsible security for such costs, to the satisfaction of such justice, in case of such dismissal, and said security shall acknowledge himself so bound by indorsement upon the warrant, which acknowledgment shall be entered also on the docket of the justice, and in case of a dismissal of such complaint, the justice shall render judgment against such complainant for the costs made thereon, unless the justice shall be of opinion that the complainant had reasonable grounds for instituting such prosecution: *Provided, however*, That in no case of a prosecution instituted under this chapter, shall the costs be paid out of the territorial or county treasury.

In case of dismissal, judgment to be rendered against complainant for costs, unless, etc.

No costs to be paid out of county or territorial treasury.

Fines.

SEC. 321. All fines imposed by virtue of this chapter, shall, when collected, be paid into the county treasury for the benefit of the school fund.

Justice to make out a statement of fines assessed by him.

SEC. 322. Each and every justice of the peace shall, on or before the first day of February in each year, make out and deliver to the county clerk of the county in which he may reside, a statement in writing of all fines assessed by him for the year ending on the first day of January next preceding, showing the name of the party, the amount of the fine, the time when assessed, whether execution was issued thereon, and the return upon the same, or if no execution has been issued, the reasons for not issuing the same; and if said fine has been made, the justice shall produce to the said clerk the receipt of the treasurer therefor; and in case no fines have been assessed by such justice he shall return that fact, and said statement shall be certified by such justice to be a true and correct statement from his docket.

Parties to have bill of exceptions signed and sealed by justice, etc.

SEC. 323. In all prosecutions instituted under this chapter, the party or parties defendant shall have the same right of exception, and to have a bill containing the same signed and sealed by such justice of the peace, and made part of the record as is provided for in other cases, and all judgments of conviction may be examined by the district court and the supreme court, upon petition in error, and reversed or affirmed as justice may require.

Jurisdiction conferred upon justices under certain sections.

SEC. 324. Jurisdiction is hereby conferred upon justices of the peace in all cases arising under sections one hundred and fifteen, one hundred and sixteen, one hundred and eighteen, one hundred and nineteen and one hundred and thirty-seven of this code, and the course of proceedings in such cases, as well as in those arising under sections one hundred and fifty, one hundred and fifty-two and one hundred and fifty-three of said code, shall be the same as prescribed by the provisions of this chapter: *Provided, however*, That in cases arising under the sections above

No security for costs to be required.

enumerated, no security for costs shall be required, as provided by section three hundred and twenty; but such costs shall be paid out of the county treasury, upon allowance by the county commissioners, in cases in which the complaint has been dismissed, or when execution against the defendant, if convicted, has been returned "no goods or chattels found whereon to levy," and a sufficient amount to pay the costs has not been collected: *And provided further*, That the penalty for the offenses described in the sections above enumerated in the criminal code shall be as in said code prescribed.

Penalty to be as prescribed in criminal code.

Provisions of criminal code, when to apply.

SEC. 325. The provisions of the criminal code which are in their nature applicable to the jurisdiction and proceedings provided for by this chapter, and in respect to which no special provision is made herein, are hereby made applicable to proceedings before justices of the peace instituted under this chapter. Justices of the peace shall have jurisdiction to try and determine all cases of misdemeanor committed in this territory, where the fine now prescribed by law does not exceed one hundred dollars.

When justices shall have jurisdiction.

Where tried.

SEC. 326. Every alleged offender shall be tried in the county where the offense shall have been committed.

Duty of justice to hear and try, and may fine or imprison, or both.

SEC. 327. When any person shall be arrested and taken before a justice of the peace, charged with the commission of a misdemeanor, it shall be the duty of the justice of the peace to proceed to hear, try and determine the case according to law and evidence, and may fine or imprison the offender when found guilty, or both fine and imprison the offender, at his option, as now provided by law, where the fine shall not exceed one hundred dollars.

Jury.

SEC. 328. The defendant may, in all cases of misdemeanor to be tried before a justice of the peace, demand a jury to try the same; when a jury shall be demanded by the defendant, it shall be the duty of the justice of the peace to proceed to summon a jury to try the case; the jury shall be selected, impanneled and sworn, and the case shall be tried and determined in the same manner as civil cases are now provided for by law before justices of the peace where either of the parties demand a jury.

Defendant may appeal, and how.

SEC. 329. The defendant may in all cases so tried before a justice of the peace, appeal from the judgment rendered against him to the district court of the proper county, on his giving bond in at least double the amount of fine and costs, with approved security; the appeal shall be taken and perfected in the same manner and within the time prescribed by law for taking appeals from judgments rendered by justices of the peace.

Prosecutors liable for costs when defendant is acquitted.

SEC. 330. In all cases of misdemeanor tried before justices of the peace, the prosecutor shall be liable for the costs of prosecution, where the defendant or defendants shall be acquitted; in case of acquittal of the defendant or defendants, the justice of the peace may render judgment against the prosecutor for the costs of the prosecution.

Original jurisdiction of district court not taken away.

SEC. 331. Nothing herein contained shall be so construed as to take from the district court original jurisdiction in cases of misdemeanor.

Jurisdiction of justices in suits to recover penalty.

SEC. 332. Justices of the peace shall have jurisdiction of suits brought to recover any penalty prescribed by statute in this territory, where the sum claimed does not exceed one hundred dollars, either where the penalty has been incurred or may hereafter be incurred by any person or persons whomsoever.

CHAPTER XXVIII.

TRESPASS ON TIMBER LANDS.

Person trespassing on timber lands guilty of a misdemeanor.

SEC. 333. If any person knowingly or willfully enter upon the land of another, and remove therefrom any timber or wood, or willfully cut, injure or remove any timber, tree or shrub, on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public ground of any town or any land held by this territory, for any purpose whatsoever, or any burying ground, or any school land, such person shall be deemed guilty of a misdemeanor, and on conviction thereof, before any justice of the peace of the proper county, shall be fined in any sum not less than thirty dollars nor more than one hundred dollars, one-half of said fine to be paid into the school fund and the other half to be paid to the informer.

Penalty, one half to school fund, and one-half to informer.

Imprisonment, until fine paid.

SEC. 334. Any person found guilty of a misdemeanor, as defined by the preceding section, and fined by any justice of the peace, shall be imprisoned in the county jail until such fine be paid.

Jury.

SEC. 335. If upon the trial of any person arrested under the provisions of this chapter, the defendant shall demand a trial by jury, the justice of the peace before whom such trial is being had, may issue a venire and proceed to impannel a jury to try said cause.

CHAPTER XXIX.

TO LICENSE AND REGULATE THE SALE OF LIQUORS.

County commissioners may grant license.

SEC. 336. The county commissioners of any county in this territory may, at any regular session of said board of commissioners, grant and issue a license for the sale of malt, spirituous and vinous liquors, to any person or persons, who shall comply with the following conditions:

Conditions.

First. The applicant for a license shall file with the county clerk the petition of at least ten freeholders of the precinct in which he resides, signed and attested before a justice of the peace or other competent officer, setting forth that the applicant for a license is a man of respectable character and standing, and a resident of this territory, and praying that license may issue to him.

Second. The applicant shall at the same time file with the county clerk his bond to the county, in the sum of not less than five hundred dollars nor more than five thousand dollars, with good and sufficient security, to be approved by the county commissioners, conditioned, that during the continuance of his license, he will not keep a disorderly house; that he will not allow gambling with cards, dice or any other implements or devices used in gambling, within his house, or within any outhouse, yard or other premises under his control, and for the payment of all damages, fines and forfeitures which may be adjudged against him under the provisions of this chapter.

Third. The applicant shall pay into the county treasury, for the use of the school fund, to be distributed as other moneys, the sum of not less than twenty-five dollars, nor more than five hundred dollars, at the discretion of the county commissioners, and file the treasurer's receipt therefor in duplicate with the county clerk, before such license shall be issued.

Period of license, and what to specify.

SEC. 337. No license shall be issued for a longer period than one year, nor for a less period than six months, and shall specify particularly the place where the person obtaining a license intends selling liquor during the continuance of said license, which said license shall be in the following form, as near as can be, making changes to suit each case:

Form of license.

TERRITORY OF NEBRASKA, COUNTY OF ———.

To all who shall see these Presents:

Know ye, That ——— having on the ——— day of ———, A. D. 18—, filed his petition and bond according to law, and paid into the county treasury the tax imposed on him as a vender of malt, spirituous and vinous liquors, therefore the said ——— is hereby authorized to vend said liquors at (*here describe particularly the location of the place*), for —— months, ending the —— day of —— next.

In testimony whereof, I, ———, clerk of the county of ———, have affixed the seal of said county, this —— day of ——, A. D. 18—.

[SEAL.] ———, *County Clerk.*

Penalty for selling to apprentice or servant under twenty-one.

SEC. 338. Any person licensed as before provided, who shall give or sell any malt, spirituous or vinous liquors, or other intoxicating drink, to any minor, apprentice or servant, under twenty-one years of age, without the consent of the parents, guardian or master thereof, shall forfeit and pay for each offense, the sum of twenty-five dollars, for the use of the school fund, to be recovered by the proper action, before any justice of the peace of the proper county, upon the complaint of any person who will file with such justice a statement in substance as follows:

Form of complaint.

A. B. complains of C. D. for the violation of section three hundred and thirty-eight of the Criminal Code.

Judgmnet.

And on proof of the violation of said section, or any part thereof, the justice shall render judgment for the whole amount of fine and costs, and the person so convicted shall be committed to the common jail until the same is paid.

Person selling to Indian, insane person or idiot prosecuted.

SEC. 339. Any person so licensed, who shall sell any intoxicating liquor to an Indian, insane person, or idiot, shall be subject to a fine of not less than fifty dollars for every such offense, which said fine shall be paid into the school fund, and distributed as hereinbefore provided, to be sued for and collected, before any court of competent jurisdiction, as prescribed in the preceding section of this chapter.

Shall pay all damages growing out of traffic.

SEC. 340. The person so licensed shall pay all damages that the community or individuals may sustain in consequence of such traffic; he shall support all paupers, widows and orphans, and the expense of all civil and criminal prosecutions growing out of or justly attributable to his retail traffic in intoxicating drinks; said damages and expenses to be recovered in any court of competent jurisdiction by any civil action on the bond named and required in section three hundred and thirty-six, a copy of which, properly authenticated, shall be taken in evidence in any court of justice in this territory; and it shall be the duty of the county clerk to deliver, on demand, such copy to any person who may claim to be injured by such traffic.

Married woman may sue for

SEC. 341. It shall be lawful for any married woman, or other person at her request, to institute and maintain, in her own name, a suit on any such bond for all damages sustained by herself and children on account of such traffic, and the money when collected shall be paid over for the use of herself and children.

damages sustained by herself and children

SEC. 342. When any person shall become a county or city charge by reason of intemperance, a suit may be instituted by the proper authorities, on the bond of any person licensed under this chapter, who may have been in the habit of selling or giving intoxicating liquor to the person so becoming a public charge: *Provided*, That the person against whom a judgment may be rendered under the provisions hereof, may recover by a similar action a proportionate part of said judgment from any or all persons engaged in said traffic, who have sold or given liquor to such person becoming a public charge, or to any person committing an offense.

Suit when any person shall become public charge by reason of intemperance.

SEC. 343. On the trial of any suit under the provisions hereof, the cause or foundation of which shall be the acts done or injuries inflicted by a person under the influence of liquor, it shall only be necessary, to sustain the action, to prove that the defendant or defendants sold or gave liquor to the person so intoxicated, or under the influence of liquor, whose acts or injuries are complained of, on that day or about that time when said acts were committed or said injuries received; and in an action for damages brought by a married woman, or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given or sold intoxicating drinks to such person in quantities sufficient to produce intoxication, or when under the influence of liquor.

Foundation of suit.

SEC. 344. No suit for liquor bills when sold in less quantities than five gallons, shall be entertained by any court in this territory, and when it shall be made to appear that any promissory note, mortgage or other obligation upon which a suit is pending, was given for liquor sold in less quantities than five gallons, such suit shall be dismissed at the cost of the plaintiff, except such sales be for medical, mechanical or sacramental purposes.

Suits for less quantities than five gallons not entertained.

SEC. 345. All persons who shall vend or retail, or, for the purpose of avoiding the provisions of this chapter, give away upon any pretext, malt, spirituous or vinous liquors, or any intoxicating drink, without first having complied with the conditions and obtained license as set forth in this chapter, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not exceeding one year in the county

Penalty for avoiding law or selling without license.

jail, or be both fined and imprisoned, and shall be liable in all respects to the public and to individuals, the same as he would have been had he given bonds and obtained license as herein provided.

Duty of justice to issue warrant on complaint of violation of law.

SEC. 346. It is hereby made the duty of justices of the peace, and all other competent courts in this territory, upon the filing of complaint under oath, when any person within the jurisdiction of said courts is guilty of a violation of any of the provisions of this chapter, to issue a warrant forthwith for the arrest of such person complained of, as in other cases of misdemeanor; and it shall be the duty of the sheriff, constable, or ministerial officer of corporate towns or cities, in their proper counties, and of the prosecuting attorneys in their respective counties, to give information under oath or affidavit to any justice of the peace, of the violation of any of the provisions of this chapter; and it shall be the duty of said justice thereupon to issue a warrant directed to any constable or sheriff of the county, and thereby cause the offender to be arrested and brought before himself or some other justice of the peace, and if upon examination the justice shall have reason to believe the party guilty, he shall be held to answer at the next term of the district court, as in other cases of misdemeanor.

Defendant may be bound over to next term of court.

When suits may be commenced before justice.

SEC. 347. All suits for damages or expenses arising under this chapter, may be commenced and prosecuted before a justice of the peace, when the damages claimed do not exceed one hundred dollars, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

Court to transmit copy of conviction to county commissioners.

SEC. 348. When any person licensed under this chapter shall be convicted for any violation of its provisions, or when judgment for damages or expenses as herein provided, is rendered against any person licensed, it shall be the duty of the court so convicting or rendering judgment, to transmit forthwith to the county commissioners a certified copy of said conviction or judgment, with a statement of evidence in the case, for which he shall be allowed a fee of one dollar, to be assessed with the costs.

Fee.

Citation to show cause why license shall not be revoked.

SEC. 349. Upon receipt of the certified copy and statement mentioned in the preceding section, the county commissioners shall cite the party to appear and show cause why his license shall not be declared forfeited, and may, in their discretion, revoke and annul said license. No person whose license has been declared forfeited shall be eligible to receive license within five years from the date of such forfeiture.

Acts devolving on county

SEC. 350. All the powers and duties in this chapter devolving upon the county commissioners, shall belong to and

Commissioners shall devolve on authorities of incorporated towns.

be exercised exclusively by the proper authorities of any or all incorporated towns or cities of this territory, within the incorporated limits thereof, and the authorities of such towns and cities are hereby empowered to make all needful rules, and pass all necessary ordinances, decrees or orders to carry out the intent of this chapter. They may determine what municipal officer shall receive the petition, file the bond and receipt, and issue the license as in section three hundred and thirty-six required: *Provided, however*, That such incorporated cities and towns may require such additional sum to be paid for license under this chapter as to them may seem best, not to exceed one thousand dollars, which sum, together with the sum herein required to be paid to the county treasurer, may be paid to the treasurer of the town or city, who shall account for the same, and his receipt therefor shall be equivalent to the receipt of the treasurer of the county for all the purposes named in section three hundred and thirty-six.

Fine, etc., for violation of that law.

SEC. 351. Any person who shall vend or retail, or, for the purpose of avoiding the provisions of this chapter, give away, upon any pretext, malt, spirituous or vinous liquors or any intoxicating drink, without having first complied with the provisions of this chapter, and obtained a license as herein set forth, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned not to exceed one month in the county jail, and shall be liable in all respects to the public and to individuals the same as he would have been had he given bonds and obtained license as herein provided.

Justice shall issue warrant on complaint.

SEC. 352. When any person shall make information on oath, before a justice of the peace, complaining of alleged violations of this chapter, such justice of the peace shall issue a warrant for the arrest of the accused. When the accused shall have been arrested and taken before a justice of the peace, the justice shall proceed to hear, try and determine the case according to law and evidence. The defendant may, if he see proper, demand a jury to try the cause. If a jury be demanded by the defendant, the justice shall proceed to summon and impannel the jury, the same as in civil cases. The trial shall be conducted the same in all respects as civil cases are now tried and disposed of before justices of the peace, when either party demands a jury.

Jury.

Appeal

SEC. 353. If any defendant or defendants shall feel aggrieved by the judgment rendered against him or them, he or they may appeal from the judgment of the justice to the district court of the proper county; the appellant shall give bonds with approved security, in at least double the amount of judgment and costs recovered against him or them. The appeal must be taken and perfected within the time and in the manner prescribed by law for taking appeals from judgments of justices of the peace in civil cases.

Executions no goods exempt from sale.

SEC. 354. Executions may be issued by the justice against the defendant or defendants, to collect the fine and costs of suit, as in civil cases, and no goods, chattels or lands of any defendant or defendants shall be exempt from sale on execution to pay the same.

CHAPTER XXX.

VAGRANTS.

Who are vagrants.

SEC. 355. All idle persons not having visible means of support and maintenance, and who live without employment, and all such persons wandering abroad and living in taverns, groceries, beer-houses, out-houses, market-places, sheds, barns, or in the open air, and not giving a good account of themselves, and all persons wandering abroad and begging, or who go about from door to door or place to place, or occupy public places for the purpose of begging and receiving alms, and all prostitutes, and all keepers, occupants, lessees, tenants and pimps of houses used for prostitution or gambling, shall be deemed and are hereby declared to be vagrants.

Arrest.

SEC. 356. It shall be and it is hereby declared to be the duty of every sheriff, deputy sheriff, constable, city marshal and deputy marshal, police or other peace officer, whenever required by complaint on oath of any resident householder, to arrest any such alleged vagrant and immediately convey him before some justice of the peace of the precinct or county where said arrest shall be made, or before the mayor of the city in which such vagrant shall be, for the purpose of examination.

Examination.

Conviction.

SEC. 357. If such justice of the peace or mayor be satisfied by the confessions of the offender or by competent testimony, that such person is a vagrant, within the meaning of this chapter, he shall make up and sign a record of the conviction of such person, which record shall be filed in the office of the clerk of the county where such conviction shall be had, and shall by warrant of commitment for vagrancy under his hand, commit such vagrant to the county jail where such conviction shall be had, for a term

Record.

not exceeding ninety days, there or elsewhere in said county to be safely kept, and, if the justice see fit so to direct, at hard labor during nine hours of each day, (Sundays excepted,) upon the streets, highways or public buildings, or other public improvements in said county or city where such conviction shall be had: *Provided*, That every person so convicted who shall be disqualified for manual labor by physical inability, and shall be a proper object for relief, shall be sent to the alms-house or poor-house of said city or county where such conviction shall be had, for a period not exceeding ninety days, and provided for according to law.

Penalty.

Provision for helpless.

SEC. 358. In the execution of the duties imposed by this chapter, any sheriff, deputy sheriff, constable, marshal or deputy marshal or other peace officer, is hereby authorized and empowered to call to his aid any male inhabitant of his county, or as many as he shall think necessary, to assist him in seizing, arresting and conveying any such alleged vagrant before the magistrate or to the common jail of the county or place of detention after conviction.

Aid in arrest.

SEC. 359. Every person so commanded to assist in such arrest as herein provided, who shall refuse or neglect, without lawful cause made known at the time, to obey such command, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall pay a fine not in any case exceeding the sum of fifty dollars, and be committed until such fine and costs of the proceedings are paid.

Refusal to aid, a misdemeanor; penalty for.

FORMS.

The following forms may be substantially followed, varying the terms to suit the case.

INFORMATION.

THE TERRITORY OF NEBRASKA, }
——— COUNTY. } ss.

The complaint and information of A. B., of said county, made before C. D., esquire, one of the justices of the peace in and for said county, on the —— day of ——, 18—, who being duly sworn on his own oath, says that the crime of (*larceny*) has been committed in the county of ———, and that one E. F. committed the same, (*or* that he has just and reasonable grounds to suspect that one E. F. hath committed the same.) A. B.

Subscribed and sworn to }
before me, }
C. D., *Justice of the Peace.*

WARRANT.

THE TERRITORY OF NEBRASKA, }
——— COUNTY. } ss.

In the name and by the authority of the Territory of Nebraska.

To all Sheriffs, Constables and Coroners of said Territory, (or to *John Doe,* if directed to a private person):

It appearing that E. F. has committed the crime of (*larceny*) in the county of ———, you are therefore commanded forthwith to arrest E. F. and bring him before me or some other magistrate of said ——— county, to be dealt with according to law.

A. B.,
Justice of the Peace.

ORDER THEREON WHEN SUCH WARRANT IS TO BE EXECUTED BY A PERSON THEREIN NAMED.

Ordered, That *John Doe,* named in the within Warrant, be hereby authorized to execute the same.
A. B.,
(Date.) *Justice of the Peace.*

COMMITMENT FOR FURTHER EXAMINATION.

THE TERRITORY OF NEBRASKA, }
——— COUNTY. } ss.

In the name and by the authority of the Territory of Nebraska.

To the Keeper of the Common Jail of said County:

Receive into your custody, and safely keep for further examination, E. F., who is charged before me with having committed the offense of (*larceny.*)

Given under my hand this —— day of ——, 18—. A. B.,
Justice of the Peace.

ORDER TO BRING UP A PRISONER FOR EXAMINATION.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

In the name and by the authority of the Territory of Nebraska.

To the Keeper of the Common Jail of said County:

You are hereby commanded to bring E. F., a prisoner in your custody, to my office in ———, in said county, for further examination.

Given under my hand this —— day of ——, 18—.

A. B.,
Justice of the Peace.

SUBPŒNA FOR WITNESSES TO ATTEND AN EXAMINING COURT.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

In the name and by the authority of the Territory of Nebraska.

To any Sheriff or Constable of said County:

You are commanded to summon A., E., I., O. and U., to be and appear before me at my office at ———, forthwith (*or* on the —— day of ——, instant, at —— o'clock in the ——noon), to testify the truth in behalf of the plaintiff (*or* defendant), on the examination of the charge against E. F., of having committed the offense of (*larceny.*)

Given under my hand this —— day of ——, 18—.

A. B.,
Justice of the Peace.

OATH OF WITNESSES ON THE EXAMINATION.

You do solemnly swear, that the evidence you shall give between the Territory of Nebraska and E. F., touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth; so help you God.

AFFIRMATION.

You do solemnly, sincerely and truly declare and affirm, that the evidence you shall give between the Territory of Nebraska and E. F., touching the charge exhibited against him, now on trial, shall be the truth, the whole truth, and nothing but the truth; and this you do under the pains and penalties that may ensue thereon.

RECOGNIZANCE OF BAIL.

THE TERRITORY OF NEBRASKA, }
against } *For the offense of Larceny.*
E—— F——. }

Be it remembered, That on the —— day of ——, 18—, A., of ——— county, Nebraska, and B., of ——— county, Nebraska, appeared personally before me, A. B., a justice of the peace of ——— county, and acknowledged themselves jointly and severally indebted to the Territory of Nebraska, in the sum of ——— dollars, to be made and levied of their respective goods, chattels, lands and tenements; to be void, however, if the said E. F. shall personally appear at the next (*October*) term of the district court of ——— county, on the first day thereof, (*or, if the recognizance be taken in term time, then it must require the party to appear on some day of the term to be therein designated*), to answer to an indictment preferred against him for the offense of (*larceny*), and to do and receive what shall be by said court then and there enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this —— day of ——, 18—.

A.
B.

Taken, subscribed and acknowledged the day and year first above written.
A. B., *Justice of the Peace.*

RECOGNIZANCE OF A WITNESS.

THE TERRITORY OF NEBRASKA,
against
E—— F——.
For the offense of Larceny.

Be it remembered, That on the —— day of ——, 18—, G. H., of the county aforesaid, appeared before me, a justice of the peace of said county, and acknowledged himself indebted to the Territory of Nebraska, in the sum of ——— dollars, to be levied on his goods, chattels, lands and tenements; to be void, however, upon his appearing in the district court of said county of ———, on the first day of its next (*October*) term (*or, if the recognizance is taken in term time, then it must require the witness to appear on some day of the term, to be therein designated*), to testify on behalf of the plaintiff (*or* defendant) in the above named prosecution, and not depart without leave of said court.

G. H.

Taken, subscribed and acknowledged the day and year above written.
A. B., *Justice of the Peace.*

MITTIMUS IN OFFENSES NOT BAILABLE.

THE TERRITORY OF NEBRASKA,
——— COUNTY.
} SS.

In the name and by the authority of the Territory of Nebraska.

To the Keeper of the Common Jail of said County:

You are commanded to receive into the jail of ——— county, E. F, and him safely keep until discharged by due course of law, he having been held by me as an examining court, for trial in the district court of ——— county, on the charge of ———, after first having inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses attending such examination.

Given under my hand, as Justice of the Peace of —— county, this —— day of ——, 18—.

A. B.
Justice of the Peace.

MITTIMUS IN BAILABLE CASES.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

In the name and by the authority of the Territory of Nebraska.

To the Keeper of the Common Jail of said County:

You are commanded to receive into the jail of ——— county, E. F., and him safely keep until discharged by due course of law, he having been held by me as an examining court, for trial in the district court of ——— county, on the charge of (*larceny*), after having first inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses in attendance on such examination, and allowed to give bail in the sum of ——— dollars, for default of which he is committed to jail.

Given under my hand, as Justice of the Peace of —— county, this —— day of ——, 18—.

A. B.
Justice of the Peace.

INDORSEMENT ON THE FOREGOING.

Bail ought to be taken in the sum of ——— dollars.

A. B.
Justice of the Peace.

BAIL AFTER COMMITMENT.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

Be it remembered, That on the —— day of ——, 18—, E. F. of ——— county, Nebraska, and G. H. and I. J. of ——— county, Nebraska, appeared personally before the undersigned, two justices of the peace of ——— county, and severally and jointly acknowledged themselves indebted to the Territory of Nebraska, in the sum of ——— dollars, to be made and levied on their respective goods, chattels, lands and tenements; to be void, however, if the said E. F., who has been committed to the common jail of ——— county, shall personally be and appear at the next ——— term of the district court of ——— county, on the first day thereof, to answer an indictment to be preferred against him, for the offense of (*larceny*), and to do and receive what shall be by said court enjoined upon him, and shall not depart the said court without leave.

Witness our hands this —— day of ——, 18—.

E. F.
G. H.
I. J.

Taken, subscribed and acknowledged the day and year first above written. }
A. B., *Justice of the Peace.*
K. L., *Justice of the Peace.*

COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO A RECOGNIZANCE.

THE TERRITORY OF NEBRASKA, } ss
——— COUNTY. }

In the name and by the authority of the Territory of Nebraska.

To any Constable of said County, and to the Keeper of the Common Jail thereof:

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of C. D., it appearing by the examination of the said C. D. on oath, before me, one of the justices of the peace of said county, that he is a material witness against the said E. F., on a charge of (*larceny*), and it having been adjudged by me, that the said offense has been committed and that there is probable cause to believe the said E. F. to be guilty thereof, and the said C. D. having been required to enter into recognizance in the sum of —— dollars for his personal appearance at the next ——— term of the district court of —— county, on the first day thereof, to give evidence on behalf of the Territory against the said E. F., for the offense aforesaid, with which requisition the said C. D. has refused to comply; and you the said keeper of the said jail are hereby required to receive the said C. D. into your custody, in the said jail, and him safely keep until he shall enter into such recognizance or be otherwise discharged according to law.

Given under my hand this —— day of ——, 18—.

A. B.,
Justice of the Peace.

WARRANT TO DISCHARGE A PRISONER UPON HIS FINDING SURETIES AFTER COMMITMENT.

THE TERRITORY OF NEBRASKA, } ss.
——— COUNTY. }

In the name and by the authority of the Territory of Nebraska.

To the Keeper of the Common Jail of said County:

Discharge from imprisonment E. F., if detained in your custody for no other cause than what is mentioned in the warrant for his commitment, under the hand of A. B., justice of the peace for said county, dated the —— day of ——, 18—.

Given under my hand, as Justice of the Peace of said county, this —— day of ——, 18—.

A. B., *Justice of the Peace.*

When to take effect.

SECTION 1. This act shall be known as "The Revised Statutes of Nebraska," and is hereby declared to be the law of the territory of Nebraska, and shall take effect and be in force from and after the first day of July, in the year of our Lord one thousand eight hundred and sixty-six.

Certain acts repealed.

SEC. 2. "An Act to establish a Code of Civil Procedure," approved November 1st, 1858, and an act supplemental thereto, approved November 4th, 1858, "An Act to adopt and establish a Criminal Code for the territory of Nebraska," approved 1858, all laws and acts amendatory of and supplemental to said codes, and all acts and laws of a general nature relative to the civil and criminal laws and proceedings of this territory, passed prior to the eleventh session of the legislative assembly, begun and held at Omaha on the first Thursday after the first Monday in January, 1866, and all acts and parts of acts conflicting with the provisions of this revision, are hereby repealed: *Provided*, The re-enactment, amendment or repeal of any law, act, title, section, chapter or provision of the civil or criminal code, or of any general law of this territory, shall in nowise affect any contract, right, claim, interest, title, action or liability which may have accrued, or any order, judgment, decree, sale, recognizance, instrument or proceeding, made, entered or had under any provision of the laws hereby re-enacted, amended or repealed, nor shall such re-enactment, amendment or repeal in anywise affect any criminal prosecution heretofore commenced, or any fine, penalty, forfeiture or punishment for crimes or misdemeanors committed before the taking effect of this revision, but such prosecution shall be carried on and continued in the manner now provided by law, and all fines, penalties and forfeitures heretofore incurred, and crimes and misdemeanors committed, shall be prosecuted the same as if no re-enactment, amendment or repeal had been made.

Repeal not to affect contracts, rights, etc., accruing under repealed laws.

APPROVED February 12, 1866.

APPENDIX.

SPECIAL LAWS.

TOWNS AND CITIES.

AN ACT to vacate the Town Site of Winnebago, in Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site known as Winnebago, in the county of Richardson, and territory of Nebraska, be and the same is hereby vacated.

SEC. 2. That all rights which may have accrued to any person or persons under the incorporation of said town, or under any acts which any corporate authorities of said town or city may have done or performed as such corporate authorities, shall not be affected by such vacation, but are hereby reserved to the person or persons claiming such rights.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to vacate a part of the Town of North Pawnee City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the streets, lanes and alleys of all that portion of North Pawnee City embraced within the west half of the north-west quarter of Section twenty-six, Township two north, Range eleven east of the sixth principal meridian, be and the same are hereby vacated.

SEC. 2. That the title to streets, lanes and alleys upon said tract of land shall revert back to and be vested in the owner of the lots upon said tract of land, in the same manner as if the same had never been surveyed and plotted as a town site.

SEC. 3. That hereafter no part of the tract of land described shall be considered as embraced within the corporate limits of the town of North Pawnee City: *Provided*, That all rights and interests which may have accrued to individuals upon said tract shall in nowise be affected by the provisions of this act.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to vacate certain Blocks in the Town of Peru.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That so much of the original plot of the town of Peru, in Nemaha county, and territory of Nebraska, as is embraced within blocks five, six, seven, eight, nine, ten, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five, and forty-six, is hereby vacated, and the streets, alleys, lanes and public grounds embraced within the limits of the tract above described shall revert to and become vested in the owner or owners of said blocks respectively.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to vacate the Town Site of Yancton, Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site known as Yancton, in the county of Richardson and territory of Nebraska, be and the same is hereby vacated.

SEC. 2. That all rights which may have accrued to any person or persons under the incorporation of said town, or under any acts which any corporate authorities of said town or city may have done or performed as such corporate authorities, shall not be affected by such vacation, but are hereby reserved to the person or persons claiming such rights.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 10, 1866.

AN ACT to vacate the Town of Archer, in Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site of Archer, in the county of Richardson, located on Section number thirty-six, of Township number two north, of Range number sixteen east, be and the same is hereby vacated, and all streets, alleys and squares dedicated to public use, shall revert to the owners of the lots adjoining them.

SEC. 2. This act shall take effect from and after the day of its passage.

Approved February 10, 1866.

AN ACT to vacate Block Number Thirteen, in the Town of Ponca, Dixon county, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all lots in block thirteen in the town of Ponca, in the county of Dixon, and all alleys located through and upon said block, be and the same are hereby vacated, and the title to said alleys shall revert to and become vested in the owner or owners of said lots respectively.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 1, 1866.

AN ACT to vacate certain portions of Rulo City, Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That so much of Rulo City as is included within the following described parcels of land, be and the same are hereby vacated and excluded from the operation of the charter and all laws made under it relating to said city, viz.: Commencing on the east line of Section seventeen, Township one, Range eighteen, forty-eight rods from the south-east corner of said section, and running north on said line to Rouleau street, in Rulo City, thence west along said street one hundred and forty rods, thence south one hundred and five rods, thence to place of beginning. Also, commencing at the south-west corner of Section seventeen, Township one, Range eighteen east, and running north on said line forty-eight rods, thence east one hundred and sixty rods, thence south forty-eight rods, thence west one hundred and sixty rods to place of beginning: *Provided*, That all rights and interests which may have accrued or become vested in any person or persons in and to said tract, or any part thereof, shall be in nowise affected by the provisions of this act.

SEC. 2. This act to take effect from and after its passage.

Approved February 1, 1866.

AN ACT to vacate a portion of the Calhoun City Company's Addition to Fort Calhoun.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that portion of the Calhoun City company's addition to Fort Calhoun in Washington county, Nebraska territory, and incorporated by the city charter thereof, lying west of Rohwer street; Paddock street, and all lying north of Paddock street; Colfax street, and all lying east of Colfax street, is hereby vacated as for town, city or county purposes.

SEC. 2. The act incorporating the city of Fort Calhoun in Washington county, Nebraska territory, approved November 4, 1858, is hereby rendered inoperative over the lands vacated by section one of this act.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 2, 1866.

AN ACT to legalize certain Acts of the City Council of the City of Fort Calhoun, Nebraska Territory, and give them jurisdiction over cemetery grounds.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the acts of the mayor and board of aldermen of the city of Fort Calhoun in Washington county, in reference to buying and receiving grants of land in their corporate capacity outside of the city limits of said city, for cemetery purposes, and the plotting and laying off the same into lots, streets and alleys, and the conveying of the lots by the mayor to private individuals, are hereby confirmed and made valid in law.

SEC. 2. The said mayor and board of aldermen and their successors in office are hereby authorized and empowered to enlarge said cemetery at such times as they may deem necessary by laying off more lots, streets and alleys, and may purchase other land for that purpose, and all deeds of land so purchased shall run to the city council of said city of Fort Calhoun, and said city council is hereby authorized by a majority vote to sell and dispose of the lots into which said land has been or may be divided for cemetery purposes, to such persons and under such rules and regulations as they shall prescribe.

SEC. 3. That all conveyances of said lots to individuals as contemplated in the preceding section shall be executed by the mayor, and sealed with the seal of said city, in pursuance of a resolution of said council, and all deeds heretofore made by the mayor of said city to cemetery lots are hereby declared valid both in law and equity, and effectual to pass the title to the lots described to the grantees therein.

SEC. 4. That all deeds heretofore or hereafter to be made in the usual form and executed by the mayor and sealed with the city seal, for lots therein as herein provided, shall convey the title thereof in fee simple to the grantees therein, subject only to such rules and regulations as may be adopted from time to time by the city council aforesaid.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 2, 1866.

AN ACT to authorize the record of certain instruments affecting the Title to Real Estate, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all streets, parts of streets, alleys, highways and other public grounds, situate in the city of Omaha and territory of Nebraska and county of Douglass, and heretofore released or which may hereafter be released by said city of Omaha, through its corporate authorities, to the Union Pacific Railroad Company, for the construction and operation of the Union Pacific Railroad, and by said company taken, selected, designated, occupied or appropriated for turn-outs, standing places for cars, depots, station houses, workshops, machine shops, freight houses, turn-tables, water stations, engine houses, and other structures required or used in the construction and operation of the said road, or for the convenience of the same, and all other streets, alleys, highways and other public grounds, taken, selected, designated, occupied or appropriated by said company for the uses and purposes aforesaid, be and the same are hereby vacated so long as the same shall be so used and occupied by said company, and the full, complete, absolute and perfect title of the same is hereby vested in said Union Pacific Railroad Company for the uses and purposes aforesaid, free and divested of the claims of all persons whomsoever: *Provided*, That whenever such streets, parts of streets, alleys, highways and other public grounds, shall cease to be used and occupied for the purposes aforesaid, they shall revert to the use of the said city of Omaha and of the inhabitants thereof.

SEC. 2. That all appraisements, assessments and awards for damages accruing to any person or persons by reason of the appropriation of any lands, lots and premises for the construction and operation of said railroad, and also by reason of the appropriation by said company of any lots, lands and premises for turnouts, standing places for cars, depots, station houses, workshops, turn-tables, water stations, engine houses, and all other structures required in the construction and operation of said railroad heretofore made for the purposes above enumerated, or for any other purpose connected with the construction and operation of said railroad, or which hereafter may be made, shall be recorded in the office of the county clerk of the county in which such lots, lands and premises are situated, in the book used for the record of deeds, and shall be indexed and certified, in like manner as in case of deeds; and such appraisements, assessments and awards, so recorded, or a certified copy thereof, shall be admitted in evidence in the same manner as deeds and other conveyances of real estate under existing laws without further proof, and when so admitted in evidence shall be deemed and held to be *prima facie* evidence of the regularity and validity of such appraisements, assessments and awards and of each and every step therein, and shall be constructive notice to all persons whomsoever, of the right of said company in and to the said lands, lots and premises.

SEC. 3. That all streets, parts of streets, alleys, highways and other public grounds situated in the town of Columbus in the county of Platte and territory of Nebraska, and heretofore taken, selected, designated, occupied or appropriated by said Union Pacific Railroad Company for turnouts, standing places for cars, depots, station houses, turn-tables, water stations, engine houses and other structures required or used in the construction and operation of said railroad, or for the convenience of the same, or which may be hereafter taken, selected, designated, occupied or appropriated for the purposes aforesaid, be and the same are hereby vacated so long as the same shall be used and occupied by said company, and the full, complete, absolute and perfect title to the same is hereby vested in said Union Pacific Railroad Company for the purposes aforesaid, and for the construction and operation of their said railroad: *Provided*, That whenever such streets, parts of streets, alleys, highways and other public grounds, shall cease to be used and occupied for the purposes aforesaid, they shall revert to the use of the said town of Columbus and of the inhabitants thereof.

SEC. 4. This act shall take effect and be in force from and after its approval.

Approved January 25, 1866.

AN ACT to allow the Council of the City of Omaha to provide for a City Prison.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the city council of the city of Omaha is hereby authorized to provide a city prison for the safe keeping of all persons imprisoned by the authorities of said city of Omaha.

SEC. 2. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to provide for the funding of the Warrants of the City of Omaha, to create a Sinking Fund, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the city council of the city of Omaha is hereby authorized and directed to cause to be prepared in due form, and cause to be printed in proper style, certain bonds hereinafter set forth.

SEC. 2. Such bonds shall be for the payment by the city of Omaha of the sum specified therein, to the holders thereof, respectively, on or before the first day of January, one thousand eight hundred and seventy six, and shall express that they are issued in pursuance of the provisions of this act. They shall be of such denominations as the said city council shall deem proper, but none to be of less denomination than twenty-five dollars, and shall bear interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year; such bonds shall be signed and sealed with the corporate seal of said city by the mayor, and countersigned by the city clerk of said city, and when delivered, and not before, said seal shall be affixed to such bonds, and coupons shall be attached to said bonds for the payment of the said installments of interest above provided for, and said coupons shall be receivable in payment of taxes, which said coupons shall be signed the same as the bonds.

SEC. 3. The holders of all outstanding city warrants or orders drawn upon the treasurer of the city of Omaha, and bearing date prior to the first day of January, A. D. 1866, shall at any time prior to the first day of October, A. D. 1866, present the same to the mayor of said city in sums of twenty-five dollars or over; and the said mayor shall submit all such orders and warrants, so as aforesaid deposited with him, to the city council, at their next meeting after their deposit with him, for their consideration; and upon being ordered and directed by resolution of said city council thereto, shall, in lieu of such warrants or orders, give a bond or bonds to the holder or holders of said warrants or orders, equal in amount to the principal and interest of such warrants or orders: *Provided*, That the interest on any such warrants or orders shall not exceed the rate of ten per cent. per annum, and the said mayor shall forthwith cancel such warrants or orders by writing across the face of each of them in red ink, plainly and legibly, the following words (properly filling blanks):

Cancelled by issue of the Bond No. ——, this —— day of ——, A. D. 18—.
(Signed) ——, Mayor.
——, Holder.

And the said cancellation shall be in the above form, and shall be signed by the city mayor, and by the party presenting such warrants or orders, and unless so canceled and signed, the same shall be charged to such mayor, and he shall be liable therefor: *Provided*, The provisions of this act shall not extend to nor include the bonding of any portion of the "Omaha city scrip," issued in the year 1857, nor any warrant, order or bond given in lieu of such scrip.

SEC. 4. The party presenting such warrants or orders, and receiving therefor a bond or bonds, shall also sign a receipt for such bond or bonds to the mayor, which shall specify the number and date of such bond or bonds and their amount, and the number, date and amount of both principal and interest of each warrant or order taken up by such bond or bonds.

SEC. 5. The mayor of said city shall record in a book to be kept for that purpose, and accessible to all persons, a statement of all the bonds so issued, giving the number, amount, date, to whom issued, and also a statement of all the warrants or orders so as aforesaid taken up, giving their number, date, amount of principal, and interest, if any, and to whom issued, and as often as once a month he shall deliver to the city treasurer all warrants so received by him, together with a copy of said statement, and the treasurer shall receipt to said mayor therefor, and he shall retain all such warrants or orders and said statement, until the next session of the city council thereafter, and they shall examine the receipts, statements, and warrants or orders, carefully and accurately, and being satisfied of the correctness of all the proceedings in relation thereto, the said city council shall, before their adjournment, fully destroy by burning, each and every such warrant and order, and the receipts and statements shall be filed with the records of said city council.

SEC. 6. The payment of all the warrants or orders upon the city treasurer of said city, which were issued prior to January 1st, A. D. 1866, and which are not presented and funded or bonded, as herein provided, prior to the first day of October, A. D. 1866, shall forever be barred, and such warrants or orders shall, after said first day of October, A. D. 1866, be null and void; and notice hereof shall be published for ten consecutive weeks prior to the said first day of October, A. D. 1866, in all the newspapers in said city of Omaha published.

SEC. 7. The payment of said bonds and coupons shall be met from the sinking fund of said city of Omaha, and the tax assessed to furnish said sinking fund shall be paid only in lawful money of the United States, or in said coupons, and whenever there shall be in said fund sufficient money in the hands of said city treasurer, to discharge one-tenth part of the full amount of all the bonds issued under this act, exclusive of the interest due thereon, the same shall be applied to the payment of the principal of said bonds, in the following manner: The treasurer shall, annually, between the first and fifteenth days of July, publish in one or more newspapers printed in said city, a notice to the bondholders, stating the amount in his hands applicable to the discharge of the principal of such bonds, and that he will receive sealed proposals up to some day named therein, (to be not less than thirty nor more than forty days from the date of the first publication,) for the surrender of such bonds for payment; such proposal shall remain sealed until the time for presenting them expires, and the same shall be opened in the presence of the mayor, or of two aldermen of said city, and the treasurer shall award the money in his hands to such holders respectively as have offered to surrender their bonds at the lowest price: *Provided*, They shall present the same within five days after said award; otherwise the money shall be paid to the next lowest bidder or bidders, but no bid shall be considered nor any money paid above the par value or amount of the bonds; and the said treasurer shall thereupon cancel said bond or bonds by writing plainly and legibly across the face thereof in red ink the words "Paid in full this —— day of ——, A. D. 18—," and the same shall be signed by the treasurer and the holder thereof; and the city treasurer shall report to the city council at their next session all the bonds so canceled, and the amount paid thereon, and return said bonds with such report to said council, and they, after careful examination, and being satisfied of the correctness of the transaction, shall burn said bonds, and the records of that session shall set forth in full the number, date, amount of each bond, and the fact of its having been burned in the presence of at least a majority of said city council.

SEC. 8. All bonds which shall be issued under the provisions of this act, which shall remain unpaid on the first day of January, A. D. 1876, shall cease to draw any interest after that date unless the holders thereof shall, when the same become due, present them to the city treasurer of said city, who, if there are no funds in his possession to pay the same, shall indorse thereon the following words: "Presented this first day of January, A. D. 1876, and not paid for want of funds. ——— *Treasurer;*" in which case such bonds shall continue to draw interest as thereon specified.

SEC. 9. The city council of said city is hereby authorized, empowered and required, in addition to the amount of tax now authorized to be levied by law, to levy a tax of two and one-fourth mills on each dollar of valuation assessed in the annual assessment, for each and every year, including the year A. D. 1866, if deemed expedient by said city council, which said special tax herein provided for shall be set apart exclusively for the payment of said bonds and coupons: *Provided, however*, That after all the said bonded indebtedness shall have been paid, the said additional tax shall be paid to the general fund of said city.

SEC. 10. If any person, or officer, contrary to the provisions of this act, shall knowingly issue or put in circulation, use, or in any manner dispose of any bond or bonds herein provided for, either before or after the same shall be paid or canceled, or shall knowingly issue, deliver or put in circulation, use or in any manner dispose of, contrary to law, any warrant or order drawn upon the treasurer of said city, either before or after the same has been paid or canceled, and thereby defraud or attempt to defraud any corporation, county, state or person, he shall, on conviction, be fined not less than five hundred nor more that five thousand dollars, and be imprisoned in the penitentiary not less than six months nor more than three years.

SEC. 11. If any officer shall knowingly and willfully fail to perform fully and completely each and every act or duty required of him by this act, he shall, on conviction, be fined in any sum not less than fifty nor more than five hundred dollars, or be imprisoned not less than ten nor more than sixty days, or both fined and imprisoned, at the discretion of the court.

SEC. 12. From and after the taking effect of this act, it shall not be lawful for said city council to order the issuance of, nor shall there be issued, any warrant or order on the city treasurer for any sum or sums of money in payment of indebtedness contracted after this act shall take effect, exceeding in the aggregate three-fourths of the amount of tax levied for the current year, exclusive of the special tax herein provided for.

SEC. 13. In order to guard against any such overdraft, each warrant or order drawn on the city treasurer, shall express on its face plainly the amount of tax levied for the current year, not including the sinking fund tax, and the amount already expended; nor shall the city council order to be drawn, nor shall there be drawn, any orders or warrants on the city treasurer within any period of three months, which in the aggregate for that period shall exceed three-sixteenths of the full amount of the tax so as aforesaid levied.

SEC. 14. Any warrant or order drawn on the city treasurer, after the three-sixteenths of the tax as aforesaid allowed to be drawn against during each period of three months is exhausted, shall not be chargeable against the said city, but may be collected by civil action from any person whose name is signed thereon in its issuance.

SEC. 15. And the said city council shall have full power and authority, upon application by petition of persons representing at least two-thirds of the assessed value of real property lying along the line of any street, for improvements to be made thereon to any extent, to order by resolution, the street commissioner to make said improvements, and the costs thereof shall be assessed by the city clerk rateably against each lot or part of lot, along the whole line of said street so improved, which assessment, when so made, shall constitute and be a perpetual lien thereon; and if the same be not paid in lawful money of the United States by or on behalf of the owner of such lot or part of lot, the said street commissioner may sell the same, or so much thereof as may be necessary to pay the amount assessed thereon, with the costs of sale, under such rules and regulations as may be prescribed by the city council. The said property shall not be sold at any time for an amount greater than the assessment against it and the costs, and after such sale the said street commissioner shall thereupon execute to the purchaser a deed therefor. Said property may at any time within six months after sale be redeemed by paying to the purchaser the amount of such assessment, and all costs and interest thereon, at the rate of forty per cent. per annum. A certified statement by the street commissioner of the cost of the whole improvements made on said street, together with a certified copy from the city clerk of the assessment of said cost for improvements on the lots or parts of lots along the line of said street, on being filed and recorded in the county clerk's office, shall be deemed and held sufficient notice to all, of the existence of said lien.

SEC. 16. This act shall take effect and be in force from and after its passage.

Approved February 10, 1866.

AN ACT to confirm the Title to certain Real Estate in Nebraska City to Nebraska City, for School purposes.

WHEREAS, The proprietors of South Nebraska City, heretofore marked, set apart and dedicated block number twenty, in South Nebraska City, as a public square or public ground; AND WHEREAS, said South Nebraska City was afterward entered by John B. Lull, as mayor of said city, under and by virtue of a law of Congress; AND WHEREAS, said John B. Lull, as mayor, deeded said block to Charles F. Holly, and said Charles F. Holly conveyed the same to one Seymour, and said Seymour released and conveyed his supposed right and title to the same to Nebraska City, for the use and benefit of the common schools in Nebraska City; therefore,

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That block twenty as designated upon the recorded plot of South Nebraska City, in the county of Otoe, and territory of Nebraska, and upon which the corporation of Nebraska City have commenced the erection of a building for school purposes under and by virtue of the provisions of the act entitled "An Act to authorize the town council of Nebraska City to raise money to erect a central high school building," approved February 15, 1864, be and the same is hereby vacated as a public square or public ground of said South Nebraska City, and the full and complete, absolute and perfect title of and to the said block number twenty, as designated upon the recorded plot of South Nebraska City, and now known as ward number three, in Nebraska City, Otoe county, Nebraska territory, is hereby vested in the said Nebraska City for the use and benefit of the common or high schools of said city, and the same shall be forever held solely for the use and benefit of the schools of said city.

SEC. 2. This act shall take effect from and after its approval by the governor.

Approved February 5, 1866.

AN ACT to confirm the Title to certain Real Estate in Nebraska City, County of Otoe and Territory of Nebraska, and vest the same in Otoe County

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that tract of land situated in Nebraska City, Otoe county, Nebraska territory, and known and designated on the plot of said Nebraska City aforesaid as "public square," and now used and occupied by said county of Otoe for the purpose of erecting a court house thereon, is hereby vacated as a public square in said city, and the full, complete, absolute and perfect title to the same is hereby vested in the said county of Otoe for the use and purposes of a court house, and such other uses for the public good as said county shall deem advisable.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

Approved February 2, 1866.

AN ACT to authorize the Town Council of Nebraska City to raise money to erect a Central or High School Building.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the mayor and common council of Nebraska City shall, by virtue of their office, be commissioners of the school house fund in and for said city, and in common council shall perform all the duties of such commissioners, and shall possess all the rights, powers and authority of precinct boards of education in the several precincts of this territory, for the purpose of raising moneys required for erecting, purchasing and leasing school houses, and procuring sites therefor, and the fitting up and furnishing thereof, and the alterations in, or additions to the present or future school buildings, or required for any other of the purposes authorized by this act.

SEC. 2. That the recorder of said city shall be the clerk of the mayor and common council thereof, when acting as commissioners of the school house fund of the said city, and shall perform all the duties of the precinct clerks of the several precincts in this territory, as clerks of the board of education of such precincts.

SEC. 3. That in all appropriations of public money for school or other purposes, Nebraska City shall be taken and considered as a precinct in the county of Otoe, and shall be entitled to all books in the same manner as other precincts in said county, and all such moneys or books shall be paid or delivered to the treasurer of said city, to be used and appropriated for school purposes in said city, on the orders of the board of education of said city, as hereinafter provided.

SEC. 4. That all the common graded and central schools organized within Nebraska City shall be public and free to all children residing within the district over the age of five years and under the age of eighteen years; that the board of education of said city shall, on or before the first day of March, in the year 1864, and each year thereafter, make an estimate of the amount of money that will be necessary to support the school system of said city, for the next succeeding year, commencing on the first day of April, and certify the same to the common council of said city, and shall within five days thereafter file the same with the recorder, and the common council, by a vote of the majority of all the common council elected, are hereby authorized to include in the general annual city tax list such additional sum as in their opinion, with the public school moneys for the year, will be sufficient to support the school system of said city, and to defray the expenses of all the schools under the charge of such board of education. The moneys thus raised for school purposes, together with all moneys received from other sources for such purposes, shall constitute a separate fund, to be called the school fund, and a separate and distinct account thereof shall be kept by the proper officer or officers of said city, and the moneys of this fund shall not be appropriated or diverted to any other purpose whatever.

SEC. 5. That the common council of Nebraska City shall have power, and it shall be their duty whenever it may be deemed necessary, to be determined by the certificate of the board of education of said city so to do—

First. To designate and purchase or lease in said city, all necessary sites for school houses therein, and to improve and fence the same as to them shall appear suitable and proper.

Second. To order, from time to time, a tax to be levied upon all the taxable property in said city, sufficient to pay all sums as they may have expended or may deem necessary to be expended for such purposes in this section above specified, not exceeding ten mills on the dollar in any one year, ascertaining the valuation of the property to be taxed, from the general assessment roll in said city. The moneys thus raised for school house purposes, together with all moneys received from other sources for such purposes, shall constitute a separate fund, to be called the school house fund, and a separate and distinct account thereof shall be kept by the proper officer or officers of the city, and the moneys for this fund shall not be appropriated or diverted to any other purpose whatever.

Third. To make out a tax list of all such taxes ordered by them at the time of and similar in form to the general assessment roll or tax list in said city, ascertaining the valuation of the property to be taxed as far as possible from the general assessment roll of said city for the same year for which such tax shall be levied, and no person shall be entitled to any reduction of the valuation of such property, unless he shall give notice in writing of his claim to such reduction to the city recorder, within ten days after the passage of the order to raise such tax; such tax list may be delivered to the marshal of the city, to be collected as other taxes levied in said city, and when such tax shall be collected, the city marshal shall pay the same over to the city treasurer.

Fourth. To make such by-laws and ordinances as they may deem necessary for the proper security and preservation of the school houses and other property owned by the city for school purposes.

Fifth. To require and take from the city marshal such security for the faithful performance of his duties, as tax collector, and to pay over and account for all school moneys of every kind that may come to his hands, after deducting his legal fees for collecting, as they shall deem adequate, which security shall be a bond of the marshal, in the penal sum of at least fifteen thousand dollars, with four good and sufficient sureties, who shall each severally justify in the sum of four thousand dollars, and which bond shall be approved by the mayor and common council, in common council, and be filed and recorded with the recorder.

SEC. 6. The mayor and common council of Nebraska City are hereby authorized and directed to raise by loan, in anticipation of the taxes, when deemed necessary, to be determined by a majority of votes cast by the legal voters of said city, at any election to be held pursuant to law regulating the levying of special taxes in said city, all moneys not exceeding in the aggregate fifteen thousand dollars, required for erecting, purchasing or leasing school houses, and procuring sites therefor, and the fitting up and furnishing thereof, and for alterations in or additions to the present school buildings, or any buildings that shall be purchased for that purpose, or required for any other purposes authorized by this act.

SEC. 7. That for the purpose of effecting such loan, the mayor and common council are authorized to issue the bonds of said city, under the seal of said city, signed by the mayor and countersigned by the recorder, to the amount of fifteen thousand dollars, and no more, bearing interest at a rate not exceeding ten per centum per annum, payable semi-annually, with coupons attached, redeemable in one, two, three, four and five years, to be paid off and redeemed out of the school house fund hereinabove provided for.

SEC. 8. That the mayor and common council of Nebraska City shall not be empowered to issue such bonds to an amount exceeding fifteen thousand dollars in the aggregate, and shall not dispose of or convert any of said bonds at a greater discount than ten per centum. Any sale thereof made by them, or any person on behalf of said city, at a greater discount than ten per centum, shall be deemed usurious and void, and such bonds so illegally sold shall be absolutely void in the hands of every person whomsever.

SEC. 9. That it shall be the duty of the recorder of said city to enter in a suitable book to be provided, all of such bonds sold, to whom, the number and to whom payable, and for what sum sold, which book shall be kept as a public record in his office, open to the inspection of any person whomsoever. That if said recorder shall make any false entry therein, in respect to such bonds or any of them, with intent to defraud any person or corporation, or to conceal any fraudulent or illegal act in relation to any of such bonds, he shall be liable to a fine not less than five hundred dollars, or imprisonment in a penitentiary not exceeding three years.

SEC. 10. That all school house funds and other school funds shall be placed by the mayor and common council of said city in the hands of the city treasurer, subject to the order of a majority of the board of education of said city, on drafts signed by them and countersigned by the recorder of said city, to be appropriated in pursuance of this act.

SEC. 11. That at the annual election for city officers in said city, in the year 1866, there shall be elected three school directors, of whom one shall be elected for the term of three years, one for two years, and one for one year; and at each succeeding annual election for city officers, one school director shall be elected for the term of three years; said directors shall qualify at the same time as other officers of said city, and shall possess all the rights, powers and authority of local school directors, and of a precinct board of education, as prescribed by the general school law of this territory, within the corporate limits of Nebraska City, except to levy and assess taxes, and shall perform all the duties of such school directors and board of education.

SEC. 12. That the recorder of said city shall be the clerk of such board of education, and shall perform all the duties required of precinct clerks of the several precincts in this territory, and be subject to the same penalties for neglect thereof.

SEC. 13. That it shall be the duty of said board of education, at least sixty days before the annual election of city officers in each year, to prepare and report to the common council true and correct statements, certified by the recorder that the same are true as appears from the records of said board, of the receipts and disbursements of moneys under and in pursuance of the provisions of this act, and during the preceding year, in which accounts shall be stated under appropriate heads—

First. The moneys raised by the common council for school purposes, under this act.

Second. The school moneys received by the treasurer of the city from the county treasurer.

Third. The amount received from all other sources for school purposes, specifying the sources.

Fourth. The moneys received for tuition fees.

Fifth. The amount received from the school house fund provided for by this act, and from what source the same came.

Sixth. The manner in which said moneys shall have been expended, specifying the amount paid under each head of expenditure.

The common council shall, thirty days before the said election, cause such statement to be published once in each week, for three consecutive weeks, in two city papers, the expense thereof to be paid out of the general fund of said city.

SEC. 14. That the said board shall have power, and it shall be their duty—

First. To establish and organize in the several wards of said city, such and so many schools as they shall deem requisite and expedient, and to alter and discontinue the same.

Second. To contract for and superintend the building, leasing, enlarging, improving, furnishing and repairing of all school houses under the charge of the mayor and common council of said city, and of making all repairs and improvements on or around the same.

Third. To divide the schools under their direction into primary or higher departments, or otherwise, whenever they shall deem such division desirable or necessary, to prescribe regulations for the transfer of scholars from one department to another, to receive scholars from other districts, and to determine the amount to be paid by such scholars to the treasurer for the use of the school fund as compensation in the schools thereof.

Fourth. To contract with and employ all the teachers in the several schools therein, and at their pleasure to remove them; to pay the wages of such teachers out of the school moneys which shall be appropriated and provided in the said city by the common council, and out of any other school moneys belonging to the school fund.

Fifth. To have the custody and safe keeping of the school houses, out houses, furniture and appendages, and see that the ordinances of the common council in relation thereto be observed.

Sixth. To purchase, exchange, improve and repair school apparatus, maps, furniture and appendages, and to provide fuel for the schools, and defray their contingent expenses and the expenses of the school library.

Seventh. To fix the rate of tuition fee to be paid by scholars residing out of the limits of said city, or any scholar taught in said schools being over the age of eighteen years.

Eighth. To defray the necessary contingent expenses of the board, including a salary to the recorder while acting as clerk of the board, which shall not exceed the compensation received by him as recorder of the city.

Ninth. To have, in all respects, the superintendence, supervision and management of the schools of said city, and from time to time adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, and generally for the promotion of their good order, prosperity and public utility; and to require the teachers of said school to keep a correct report of the number and name of scholars in attendance at such school, and report the same to the board.

Tenth. Whenever in the opinion of the board it may be advisable to sell or otherwise dispose of any of the school houses, lots, sites, or any of the school property now or hereafter belonging to said city, to report the same to the common council.

Eleventh. To prepare and report to the common council such ordinances and regulations as may be deemed necessary or proper for the protection, safe keeping, care and preservation of school houses, lots, sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations, and annually to determine and certify to the common council, the sums necessary and proper to be raised under the provisions of this act, specifying the sums required for each of the several purposes therein mentioned.

Twelfth. Between the first day of April and the first day of May in each year, to make and transmit to the common council, a report, bearing date on the first day of April in the year of its transmission, and stating—

1st. The whole number of schools and the grade thereof kept open for the reception of scholars during the preceding year.

2nd. An account and description of all the schools kept in said city during the preceding year, the time they severally have been taught, and the number of teachers for each respectively.

3rd. The number of children taught in said schools respectively, and the number of children over five and under eighteen years, residing in the city on the first day of March of that year. Such report shall be published by the common council in the two papers in said city, for three weeks, once in each week.

SEC. 15. That the title of the school houses, sites, lots, furniture, books, maps, apparatus and appurtenances, and all other school property hereinbefore in this act mentioned, shall be vested in Nebraska City; and the same, while used or appropriated for school purposes, shall not be liable to be levied upon or sold by virtue of any warrant or execution, or other process, nor be subject to taxation or assessment for any purpose whatever; and the said city, in its corporate capacity, shall be able to take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of the schools of said city, whether the same shall be transferred in terms directly to said city by its proper style, or by any other designation, or to any other designation, or to any person or persons or body for the use of said schools.

SEC. 16. That whenever the said board of education shall deem it advisable to dispose of any such school property provided in this act, the common council may, by order, direct the same to be sold, and upon such sale the mayor shall execute, under his hand and seal of office, to the purchaser, a conveyance therefor, duly attested by the recorder, and the proceeds of such property shall be paid to the city treasurer, for the use of the school house fund provided for in this act.

SEC. 17. That the city treasurer shall execute a bond to Nebraska City in the sum of twenty thousand dollars, with at least four sureties, each to justify in the sum of at least five thousand dollars, and to be approved and recorded in the manner provided by this act for the execution of the city marshal's bond, and any bond executed under this act, shall, whenever a breach thereof has happened, be prosecuted in the name of the mayor and common council for the use of the appropriate fund for the protection of which such bond was executed.

SEC. 18. That the board of education for the precinct of Nebraska City shall be and continue to act as such, until a board of education shall be elected and qualified by the provisions of this act.

SEC. 19. That the general school laws of this territory in force at the time of the passage of this act, shall, so far as the same are applicable, be taken and construed as part of this act, and that all acts and parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; and this act shall be in force and effect from and after the date of its passage.

Approved February 12, 1866.

AN ACT to revise an Act entitled "An Act to consolidate Nebraska City, South Nebraska City, and Kearney City, and to incorporate Nebraska City," approved December 31, 1857, and the several amendments to said Act.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following described territory, being the east half of Section eight, fractional Sections nine and ten, and the north half of the north-east quarter of Section sixteen, of Township number eight north, of Range number fourteen east of the sixth principal meridian, in the county of Otoe and territory of Nebraska, and embraced within the original corporate limits of Nebraska City, South Nebraska City, Kearney City and Prairie City, together with all the additions which may hereafter be made thereto according to law, is hereby declared to be a corporation, by the name and style of Nebraska City.

SEC. 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record or any other legal tribunal; may have a common seal and may alter it at pleasure, and may acquire, purchase, hold, lease, sell and convey any estate, real, personal or mixed, for the use of the corporation.

SEC. 3. The legislative authority of said city shall be vested in a mayor and a board of three aldermen.

SEC. 4. The said mayor and board of aldermen shall, on or before the 10th of April, 1866, divide said city into three wards, numbered one, two and three, which division shall be so made as to give to each ward, as near as practicable, an equal number of resident electors; and each ward shall be entitled to one alderman.

SEC. 5. The qualified electors of said city shall, on the 1st Monday of May, A. D. 1866, and annually thereafter, elect a mayor, recorder, assessor, treasurer, marshal, and at the election on the said 1st Monday in May, 1866, there shall be chosen one alderman, who shall reside in the first ward of said city, and who shall hold his office for three years; also one alderman, who shall reside in the second ward, who shall hold his office for two years; also one alderman, who shall reside in the third ward, who shall hold his office for one year. And at every subsequent annual election there shall be chosen one alderman to fill the place of the alderman whose term of office shall expire; and said aldermen shall be property holders in Nebraska City; and the mayor and aldermen so elected, when assembled together and duly organized, shall constitute the city council of said city, and a majority of the city council shall constitute a quorum for the transaction of business.

SEC. 6. Every legal voter of the territory who shall be an actual resident of the city at the time of an election, is declared to be a citizen of said city, and is entitled to vote at all city elections.

SEC. 7. The election of city officers shall be conducted in the same manner as precinct elections.

SEC. 8. No person shall be eligible to any elective office mentioned in this act unless he be a legal voter of the city, and has been a resident six months in the territory, thirty days in the county, and ten days in the city or precinct, next preceding his election.

SEC. 9. It shall be the duty of the mayor to see that the laws and ordinances of the city are faithfully executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses and permits granted by the city council, and to perform such duties and exercise such powers as pertain to the mayor of a city, and such as may be granted or imposed by any ordinance of the city council consistent with law.

SEC. 10. For all elections for city officers the mayor shall issue a proclamation to the voters of the city, naming the time and places for holding such election, and the officers to be chosen, and cause a copy of the same to be posted up in each ward at least ten days previous to the day of election. The polls shall be opened between the hours of eight and ten in the forenoon, and continue open until four o'clock in the afternoon. Within two days after the election, the judges of election shall make out their returns to the mayor or president of the city council, as the case may be, who shall examine them at their next meeting, and cause an abstract of the votes to be recorded; and the mayor or president of the city council shall issue certificates to those who are elected to the several offices, notifying them of their election.

SEC. 11. The city council shall be the judge of the election and qualifications of its own members; it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to inspection of every citizen, and it may compel the attendance of its members in such manner as it may adopt. The members of the city council shall be paid out of the city treasury a compensation not exceeding two dollars per day for their services; and said city council shall hold a meeting for the transaction of business one day in each month, and they may provide by ordinance for calling special meetings, but the members shall receive no compensation for their services at such special meetings.

SEC. 12. No member of the city council shall be eligible to any office within the gift of the city council, during the term for which he was elected, nor shall he be interested, directly or indirectly, in the profits of any contract, job, work or services to be performed for the city.

SEC. 13. The mayor shall be the presiding officer of the city council when present, and shall give the casting vote when there is a tie, and in his absence the council may appoint a president *pro tempore* from their own body.

SEC. 14. The mayor shall sign all ordinances passed by a majority of all the aldermen, and the recorder shall attest the same, and before they take effect they shall be published in one or more newspapers printed in the city; and they shall also be recorded in a book to be kept for that purpose, and each and every ordinance in said book shall be signed by the mayor and attested by the recorder.

SEC. 15. The mayor shall be a conservator of the peace within the city, and *ex officio* justice of the peace, and is invested with exclusive original jurisdiction, for the violation of the city ordinances, and with criminal jurisdiction of offenses against the laws of the territory committed within the city, in the same manner as justices of the peace; he shall not be disqualified from acting in such judicial capacity by reason of the proceedings being in the name or in behalf of the city.

SEC. 16. Appeals to the district court in the same county shall be allowed from the judgments and decisions of the mayor in the same cases, time and manner as may at any time be allowed by law from those of justices of the peace, and they shall be tried as other cases, and he will be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace.

SEC. 17. The marshal shall be a conservator of the peace, and the executive officer of the mayor's court, and shall execute and return all processes directed to him by the mayor; and in cases for the violation of the city ordinances and of the criminal laws of the territory, may execute the same in any part of the county, and he shall have the same authority within the city to quell riots and disturbances, to prevent crimes and to arrest offenders, that the sheriff has within his county, and may, in the same cases and under the same penalties, require the aid of citizens, and perform all duties imposed by the city council. He may, with the approval of the council, appoint one or more deputies, for whose official conduct he shall be responsible. For the service of legal process he shall be entitled to the same fees as a constable, and for services required by the council, such compensation as it may allow.

SEC. 18. The treasurer, recorder, assessor and marshal shall give such bond, perform such duties, and exercise such powers as may be required of them by ordinance, not inconsistent with law, which bond shall be approved by the council and filed with the mayor.

SEC. 19. It shall be the duty of the recorder to keep a true record of all the proceedings of the city council, and such records shall be open in all business hours to the inspection of any citizen.

SEC. 20. The mayor, aldermen, marshal, treasurer, recorder and assessor, shall respectively take an oath to support the constitution of the United States and the laws of this territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. The oath of office may be administered by the mayor or recorder, and in the transaction of the business of the corporation, those officers and the president, for the time being, may administer oaths, which shall have the same effect as if administered by any other judicial officer.

SEC. 21. The city council shall fix a reasonable sum for the compensation of the recorder; and such fees for the assessor as shall not exceed those allowed to the county assessors for similar services.

SEC. 22. The council may appoint, during its pleasure, street commissioners, clerk of the market, city supervisors, health officers, and such other officers as it may deem advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

SEC. 23. When a vacancy occurs in any of the elective offices, the council may fill the vacancy by appointment, until the next election and qualification of a successor.

SEC. 24. The city council is invested with authority to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness, houses of ill fame, and indecent behavior in public places, and, in general, to provide for the safety and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace; and the laws of the territory relative to carrying into effect a judgment of the justice of the peace imposing a fine, shall be applicable to judgments in the above cases; and the mayor is hereby vested with authority in all cases of the violation of the city ordinances, or the penal laws of the territory, where a justice of the peace has jurisdiction, upon information filed upon oath, to issue a warrant in the name of the territory, and arrest such person as for crime and proceed summarily to hear and determine the case and impose such penalty as shall be by ordinance fixed, or as may be prescribed by the laws of the territory, and on default of the payment of such fine, he may sentence any such person to work upon the streets or highways for a period not to exceed three months; said sentence to be carried into execution by the marshal in such manner as the mayor shall direct; and the said mayor shall have concurrent jurisdiction with justices of the peace in said city in all cases of vagrancy: *Provided*, The defendant shall have the right of appeal to the district court in all cases, upon giving bond in a sufficient sum to secure the fine assessed or the penalty imposed.

SEC. 25. The city council is authorized to establish fire companies and provide them with fire engines, hose and other apparatus, and by ordinance prescribe the manner of construction of flues, chimneys, stovepipes, or other conductors of the smoke or gases from any warming or other fire apparatus in any building within said city; and when such chimneys, flues, pipes, or other conductors from any warming or fire apparatus shall, in the opinion of the fire warden, be in a condition to endanger by fire the property in which the same is situated or contiguous thereto, the council shall order the same to be put in proper repair or condition, by or at the expense of the owner thereof, or remove the same, and on his or her failure to comply with such order, he or she shall be liable to a fine not exceeding one hundred dollars, to be collected as other penalties under the provisions of this act, and the city marshal of said city shall be *ex officio* fire warden, and shall have authority to carry out the ordinances of the council in that behalf enacted.

SEC. 26. The city council may regulate the keeping and sale of gunpowder within the city, and it shall have exclusive authority to provide for the prohibition or license of the traffic in intoxicating liquors, billiard tables, ball or ten pin alleys, saloons, exhibitions, shows and theatrical performances: *Provided*, That the licenses to be imposed on retailers of intoxicating liquors shall never be granted for a less sum than is imposed at the time by the laws of the territory: *And provided further*, That the above authority shall not be exercised upon any exhibition of a purely scientific character.

SEC. 27. The council may make all necessary ordinances in relation to the cleanliness or health of the city; may regulate the system of cartage, drayage, hacks and omnibuses within the city, and may issue licenses therefor, and may prohibit hogs and other animals from running at large within the city.

SEC. 28. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers shall be accountable to the city council in such manner as it directs. The council shall publish annually a particular statement of the receipts and expenditures of the city and of all debts owing to or by the same.

SEC. 29. The council shall have the exclusive authority to make necessary surveys, to establish the grade of all streets, alleys and wharves in the city, and may change the same upon the petition of the owners of two-thirds of the value of the real estate upon both sides of the street.

SEC. 30. The city council shall have the title to and full control of the streets, alleys, public grounds, wharves, squares, parks and commons belonging to the city, and may provide for the improvement of the same at the public expense, and may cause sidewalks to be paved in the same, and may require owners of lots to lay or construct pavements of such widths and materials as may be prescribed by ordinance of the council along the street line of their respective lots, and in case of neglect, after a reasonable time, to comply with such requirements, the estimated cost of such pavements shall be assessed on the lots named in the order, which shall have the same force and effect of a tax levied thereon, and the same may be sold therefor as for a tax, subject to the same right of redemption.

SEC. 31. Whenever the owners of two-thirds in value of the real estate on both sides of any street shall petition the council, it shall have authority to levy a tax of not exceeding one per centum on the property contiguous to said street, to be expended in grading and improving the same.

SEC. 32. The city council is authorized to levy and collect taxes not exceeding one-half of one per centum on all taxable property within the city for general purposes of the city, according to the laws of the territory; and a further tax, not to exceed two mills upon the dollar, for a sinking fund to pay off bonds heretofore or which may hereafter be authorized to be issued by authority of law, for the extinguishment of the outstanding indebtedness of said city.

SEC. 33. The marshal, or, in case of his absence or disability, such person as the council shall appoint in his stead, shall be the collector of taxes, and before proceeding to collect the same, shall give twenty days notice of the assessment and levy of the tax, and the rate thereof in general terms, in some newspaper printed in the city, and at any time within twenty days after the first publication of said notice, any person who is aggrieved by the assessment and levy may appear before the council, which may correct the same if found erroneous.

SEC. 34. The tax list shall be made out by the recorder, and the mayor shall endorse thereon an order to the marshal to collect the taxes thereon levied, which shall authorize him to collect the same by levy and sale as on execution.

SEC. 35. Taxes on real estate shall be a lien thereon, and it may be sold therefor when the taxes have remained unpaid for six months after the publication of the notice of the tax.

SEC. 36. Such sale must be at public auction, of which at least twenty days notice must be given in some newspaper published in the city, and he who bids to pay the amount due for the least quantity of land, shall be deemed the highest bidder, and the manner of ascertaining and determining the least portion bid, shall be provided by ordinance of the city council.

SEC. 37. The marshal shall execute and deliver to the purchaser a deed running in the name of the territory, which shall have the same force and effect as the deed of the proper county officer in like case on sale for county taxes.

SEC. 38. The council are authorized to borrow money for any object in their discretion, if at a regular or special election, after twenty days public notice, stating distinctly the nature and object of the loan, and the amount thereof, the voters, by two-thirds of the legal votes at such election, shall determine in favor of said loan, but the loan shall in no case be diverted from the specified object.

SEC. 39. All road tax which may be levied on any property in the said city, in lieu of labor or otherwise, shall be paid to the proper authorities of said city for the improvement of the streets thereof.

SEC. 40. Any person being a resident of said city, subject by the laws of the territory to work on roads and highways, shall be required to do and perform such work, or cause the same to be done under the direction of the proper authorities, upon the streets of said city or upon public roads leading thereto, as the authorities may direct; the city council shall have exclusive jurisdiction within the limits of the city.

SEC. 41. The city council may employ a civil engineer or an attorney at law to perform any special service required by the city, who shall be allowed such compensation as may be agreed upon at the time of making the contract for their services.

SEC. 42. The city council is authorized to establish the rates and provide for the collection of wharfage and charges for the use of the wharf or levee, and shall provide that the net proceeds of all moneys so collected shall be applied to and expended for the improvement of the wharf and for no other purpose whatever.

SEC. 43. The city marshal of said Nebraska City shall pay into said city treassury all moneys, warrants and scrip received for taxes in said city, in the same funds in which the same were received, and if he shall pay into the said treasury any scrip, warrants, or other evidence of city indebtedness, in lieu of money by him received for taxes, or from any other source, he shall, upon conviction thereof before any court having jurisdiction of the same, forfeit and pay the sum of five hundred dollars, and be sentenced to the penitentiary not less than one year.

SEC. 44. An act approved December 31, 1857; an act approved December 22, 1859; an act approved January 11, 1861; an act approved January 9, 1662; an act approved February 13, 1865; and all acts or parts of acts amendatory of the act entitled "An Act to consolidate the corporations of Nebraska City, South Nebraska City and Kearney City, and incorporate Nebraska City," approved December 31, 1857, and all acts inconsistent with this act, be and they are hereby repealed.

SEC. 45. This act shall be in force and take effect from and after its passage.

Approved February 12, 1866.

AN ACT to fund the Corporate Indebtedness of Nebraska City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the provisions of an act entitled "An Act to provide for the funding of the warrants of the city of Omaha, to create a sinking fund and for other purposes," passed at the present session of the legislative assembly, be and the same are hereby made applicable to Nebraska City, Otoe county, the same as if the words "Nebraska City" were therein named instead of "Omaha;" except the last proviso to section three, and sections twelve, thirteen, fourteen and fifteen of said act, which shall be void in relation to Nebraska City; and the following shall be applicable and take the place of the last proviso of section three of said act: *Provided*, That all warrants or orders upon the city treasury bearing date after the first day of

June, A. D. 1858, are hereby declared to be the warrants or orders intended to be funded by the provisions of this section; and all scrip, levee, street, Franklin avenue funds, issued by the several corporations of Nebraska City. South Nebraska City and Kearney City, issued prior to said first day of June, A. D. 1858, shall only be funded at the following valuation, to wit: Nebraska City scrip or levee fund, at eighty cents on the dollar; South Nebraska City scrip, street, or levee fund, at fifteen cents on the dollar; Kearney City scrip, Franklin avenue warrants, written warrants, or levee funds, at fifty cents on the dollar; and interest shall be allowed only at the rate of ten per centum per annum after due.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to authorize the Board of Education of Bellevue Precinct and the City of Bellevue, in Sarpy County, to levy a Special Tax for School purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the board of education of Bellevue precinct in the county of Sarpy, are hereby authorized and empowered to levy a special tax not exceeding ten mills on the dollar valuation, in addition to the taxes now allowed by law on all property subject to taxation in said precinct, which said tax shall be assessed and collected in manner and form as provided in section twenty-two* of "An Act providing for the better regulation of schools in Nebraska," approved November 4, 1858, and when collected, the funds derived from such tax shall be by the said board of education applied to the support of common schools in the several subdistricts of said Bellevue precinct in the same manner as now provided by law.

SEC. 2. That the board of education in the city of Bellevue, Sarpy county, are hereby authorized to assess on all property subject to taxation in said city, a tax not exceeding five mills on the dollar valuation in addition to the tax now allowed by law, which said tax shall be assessed and collected and the funds derived therefrom be expended in manner and form as provided by section thirty-three† of "An Act providing for the better regulation of schools in Nebraska," approved November 4, 1858.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT vacating a part of Cuming City, Washington County, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that part of the town of Cuming City, Washington county, Nebraska territory, lying south of Fifth street, and all that part of said Cuming City lying west of Clay street, and all that part of said Cuming City lying north of Ninth street, and all that part of said Cuming City lying east of Pearl street, be and the same are hereby vacated.

SEC. 2. That the title to so much of the streets and alleys as lay in said vacated portion of Cuming City shall revert back to be vested in the owners of lots and blocks respectively in the same manner as if the same had never been surveyed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to change the Name of the Town of Saint Deroin, in Nemaha County, to Marysville.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the name of the town of St. Deroin, in the county of Nemaha, in said territory, be and the same is hereby changed to that of Marysville, by which latter name the said town shall be hereafter known and called.

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* Revised Statutes, page 361.

† Revised Statutes, page 366.

SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

SEC. 3. That this act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to amend the Charter of the City of Plattsmouth, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the charter of the city of Plattsmouth, approved March 14, 1855, is hereby amended so that said charter is extended over the following described tract of land, to wit: All of fractional Section number 18, in Township 12 north, of Range 14 east of sixth principal meridian, and east half of south-east quarter and east half of north-east quarter of Section 13, Township 12 north, of Range 13 east of sixth principal meridian, and south-east quarter of south-east quarter of Section 12, Township 12 north, of Range 13 east, and south half of south-west quarter of Section number 7, Township 12 north, of Range 14 east of sixth principal meridian, and running to the centre of the channel of the Missouri river.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor of the territory of Nebraska aforesaid.

Approved February 12, 1866.

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COUNTIES, COUNTY BOUNDARIES, COUNTY COMMISSIONERS AND THEIR POWERS AND DUTIES.

AN ACT defining the time of Session of the Boards of Equalization, for the Counties of Dixon, Cedar, Dakota, and L'Eau qui Court.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the county commissioners of the counties of Dixon, Cedar. Dakota, and L'Eau qui Court, shall constitute a board of equalization for their respective counties; and said board, or any two of them, shall hold a session of one day at their county seat, on the third Monday of April in each year, for the purpose of correcting the assessment roll in their respective counties. And during the sitting of said board, any person feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any supposed error in the listing or valuation of his property, whether real or personal; and if any are returned as refusing to render a list, or to be sworn thereto, or to list the property of another, and can show good cause for such failure or refusal, the penalty prescribed in the act providing for the valuation and assessment of real and personal property, approved February 15, 1864, may be remitted.

SEC. 2. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to authorize the County Commissioners of Burt County to raise money to erect a Court House and Jail.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the county commissioners of Burt county are hereby authorized to raise by loan, in anticipation of the taxes, all money, not exceeding in the aggregate fifteen thousand dollars, required for the erecting or purchasing a court house and jail, and providing sites therefor, and fitting up and furnishing the same.

SEC. 2. That, for the purpose of effecting such loan, the said county commissioners are authorized to issue the bonds of said county, under the seal thereof, signed by the chairman of the board of county commissioners, and countersigned by the clerk, to the amount of fifteen thousand dollars, and no more, bearing interest at a rate not exceeding ten per cent. per annum, payable annually on the first day of May, with coupons attached, redeemable in not less than ten years nor more than fifteen years, at the pleasure of the county commissioners.

SEC. 3. The county commissioners of said county shall not be authorized to dispose of, nor convert any of said bonds at a greater discount than ten per cent. If said commissioners, or any person acting for said county, by or through their appointment or election, shall sell any of said bonds at a greater discount than ten per cent., the said county commissioners shall jointly and severally be liable to said county in damages to be collected by civil suit, for the amount for which such bond or bonds sold, less than ten per cent. discount, and, in addition thereto, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars.

SEC. 4. It shall be the duty of the county clerk of said county, to enter in a suitable book to be provided for that purpose, all such bonds sold, to whom, the number, and to whom made payable, and for what sum sold, which book shall be kept as a public record in his office, open to the inspection of any person whomsoever.

SEC. 5. That for the purpose of paying the interest annually upon the bonds so sold, it shall be the duty of the county commissioners to levy a tax upon all taxable property in said county, sufficient to pay ten per cent. interest upon all bonds sold, in addition to the amount necessary to pay the current expenses of said county.

SEC. 6. The county commissioners shall, however, before negotiating such loan or loans, or issuing any bond or bonds, as mentioned in the preceding section of this act, call a special election in said county, at which election there shall be submitted to the vote of the electors of said county the question of said loan for the purpose aforesaid, and shall cause public notice of said election to be given at least twenty days prior to the day of holding the same, by posting said notices in at least three conspicuous places, in each precinct in said county. And the notices posted in each precinct shall state the time and place for holding said election, and shall also certify the amount proposed to be raised, and the precise purpose and object for which it is to be expended. The ballots cast shall be "For the Loan" and "Against the Loan." The election shall be called under the provisions of this act, and the returns and abstract of the votes cast shall be conducted in the same manner as is prescribed for conducting elections under the general laws of this territory. And if it shall appear that two-thirds of all the votes cast shall be in favor of the loan, but not otherwise, the county commissioners shall be fully authorized to proceed and issue and negotiate said bonds, in manner as heretofore prescribed.

SEC. 7. This act to take effect from and after its passage, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved February 9, 1866.

AN ACT to create Silver Creek Precinct, in Burt County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That there be and there is hereby created a precinct within the limits of the county of Burt, as hereinafter defined, which shall be known as Silver Creek precinct, with all the powers and rights of a county precinct.

SEC. 2. The boundaries of said precinct shall be as follows: Commencing one mile south of the north line of Township number twenty-one, Range ten east; thence west to the county line between the counties of Burt and Cuming; thence north to the south line of Decatur precinct; thence east to the west line of Arizona precinct; thence south to the place of beginning. And all power, authority and jurisdiction heretofore exercised over the territory within the foregoing boundaries for election and other purposes by officers of Tekamah precinct, are hereby abrogated, and all persons holding precinct offices by election appointment or otherwise, residing within the foregoing boundaries, holding any books, papers or moneys of said Burt county, are hereby required to surrender the same to the county commissioners of said Burt county, and settle their accounts with them on the first Monday of April, 1866, and the offices by them held respectively are hereby declared vacant.

SEC. 3. It is hereby made the duty of the probate judge of said Burt county, immediately upon his knowledge of the passage of this act, to appoint all such competent and suitable persons as are required to fill all the precinct offices necessary and requisite by law for this precinct, who shall qualify in manner as now required by law on the first Monday of April, 1866, and they shall hold their offices till the next general election, and until their successors are elected and qualified.

SEC. 4. All acts and parts of acts conflicting with the provisions of this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to provide for building a Court House and Jail in Washington County, and to relocate the County Seat thereof.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the county commissioners of Washington county are hereby authorized and required to levy a tax of five mills on the dollar valuation, or so much thereof as they may deem necessary, on all taxable property, real and personal, in said county, for the year A. D. 1866, and annually thereafter until a sufficient sum shall have been so raised for the purpose of building a court house and jail in said county.

SEC. 2. Said tax shall be assessed, levied and collected in the same manner as other taxes, and when collected by the county treasurer, shall be set apart as a county building fund, and subject to the order of the county commissioners, for building and repairing purposes.

SEC. 3. The county commissioners aforesaid shall, at their first regular meeting after the passage and approval of this act, order an election of the qualified electors of said Washington county, for the purpose of relocating the county seat, and they shall give ten days notice of such election by posting up written notices in the several precincts in the usual manner, and said election shall be conducted by the same officers and in the same manner as other county elections, and the returns shall be made and canvassed as provided for by law for other elections.

SEC. 4. The electors shall designate on their ballots what city, town or section of land they desire said county seat located at or on, and the place receiving a majority of all the votes cast, shall be and remain the county seat of said county, and if it shall appear after the vote is canvassed that no one place has received a majority of all the votes cast, another election shall be ordered to decide between the two places which shall have received the highest number of votes at said first election; and for the purpose of ordering such second election, the county commissioners aforesaid shall meet at their usual place of meeting on the first Saturday after said first vote shall have been canvassed, and they shall give ten days notice as before, and no ballots shall be counted but for the two places designated in the notices of said second election, and which received the highest number of votes at the first election; and the said second election shall be conducted and the returns made and canvassed in the same manner as other county elections, and the place receiving the highest number of votes cast shall be declared the county seat of said county of Washington.

SEC. 5. When said county seat shall have been determined and located by a majority of the votes cast, as provided in sections three and four of this act, it shall be the duty of the county clerk of said county to notify all the county officers of such relocation, by giving them a written notice thereof; and said county officers shall, within three months after the date of receiving such notice, remove their respective offices, and all county papers and property which may be in their charge, to the place where said county seat shall have been located under the provisions of this act, and any one refusing so to remove their said offices or property in their charge, shall be removed from office by the county commissioners, and some other person appointed in their stead, until the next regular election, when the vacancy shall be filled as provided by law.

SEC. 6. If said county seat shall be located under the provisions of this act upon any tract of land where there is no city or town, or where there is no suitable place for county buildings, then the county commissioners shall purchase a tract of land adjacent thereto, and cause the same to be plotted and laid off into lots, blocks, streets and alleys according to law, and shall sell said lots from time to time, as they may deem for the best interests of the county, at public auction, giving twenty days notice thereof by posting up written notices in the different precincts of the county. The proceeds of such sales shall be deposited with the county treasurer of said county, and become a part of the building fund, and subject to the order of the county commissioners as provided in section two of this act.

SEC. 7. No money shall be expended under the provisions of this act until the county seat shall have been located, as provided for in sections three, four, five and six of this act, and none shall be expended at any other place than the one designated as the county seat under the provisions of this act.

SEC. 8. If all the commissioners are not present at the times herein provided for ordering the elections under the provisions of this act, then the one or ones who are present shall order said elections; and if they shall all fail to attend, then it shall be the duty of the county clerk to order said elections, and the same shall be valid in law.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to authorize the County Commissioners of Sarpy County to levy a Special Tax for the relief of the Road Fund of said County.

SECTION. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of Sarpy county are hereby authorized and empowered to levy and collect annually, in addition to the amount now authorized by law to be levied and collected, an amount equal to the interest and fifteen per cent. of the principal of the indebtedness of the general road fund of said county, and this amount shall be included with the annual tax, and collected therewith, and may be paid in county orders or warrants.

SEC. 2. This tax shall be considered a special sinking fund for the relief of the general road fund of said Sarpy county, and the county commissioners shall not draw upon the county treasurer for the same, or for any part thereof.

SEC. 3. This act shall take effect and be in force from and after its passage, and all conflicting acts or for parts thereof are hereby repealed.

Approved February 12, 1866.

AN ACT to authorize Subdistrict number Two in Precinct number One, in Lancaster County, to raise a fund for the erection of a School House.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That in addition to the tax now by law authorized to be levied for school purposes in said subdistricts, the directors thereof are hereby authorized to raise and collect the sum of fifteen hundred dollars for the exclusive purpose of erecting a school house in said district: *Provided, however*, Before said directors shall so levy or collect said money, there shall be submitted to the qualified electors of said subdistrict the question whether or not the same shall be levied, at an election to be held for that purpose in said subdistrict, due notice of which shall be given by said directors by posting up written or printed notices thereof in at least six public places in said district, at least ten days before election, which said notices shall distinctly set forth the rate of tax proposed to be levied per year, until the whole amount of said money shall be raised for the purposes aforesaid, and at said election the electors in favor of levying said tax shall have written or printed on their ballots the words "For the School House Tax" and those not in favor thereof, shall have written or printed upon their ballots, the words "Against the School House Tax;" and if a majority of the electors so voting at said election shall vote in favor of said tax, then the said directors shall at once proceed to cause a levy and collection of said tax, at the rate mentioned in said notices, in the same manner as is now provided by law for the levy and collection of other special school taxes; and the directors of said subdistricts shall continue from year to year to cause to be levied and collected, taxes at the same rate, until the whole amount of said fifteen hundred dollars shall be levied and collected.

SEC. 2. That the said directors, after the first levy of said tax, shall have the power and they are hereby anthorized to borrow such sums of money as they may deem best, but not exceeding in the aggregate the sum first herein mentioned, and pledge for the payment thereof, the money to be raised as herein provided, and when so borrowed, the said taxes when collected shall be faithfully applied to the repayment thereof: *Provided*, That in no case shall said directors pay a greater rate of interest than ten per cent. per annum on the sums so borrowed, nor shall the money raised or borrowed under the provisions of this act be diverted to any other purpose than the building or reparation of a school house in said district.

SEC. 3. That the officers of said county whose duty it is by law to levy and collect other special taxes for school purposes, are hereby required to do all and every thing or things which may be necessary to give effect to the provisions of this act upon being notified by said directors of the amount or rate of tax to be levied and collected as aforesaid.

SEC. 4. That all acts inconsistent with the provisions of this act are hereby repealed.

SEC. 5. That this act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to re-define the Boundaries of Cuming County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That hereafter the boundaries of the county of Cuming shall be as follows, to wit: Beginning at the point where the line dividing Ranges seven (7) and eight (8) intersects the south line of the Omaha Indian Reservation, thence west with the south line of said reservation to the south-west corner of said reservation; thence north with the west line of said reservation to the point where the line dividing Townships twenty-four (24) and twenty-five (25) north, intersects said reservation on the west; thence west to the north-west corner of Township twenty-four (24) north, of Range four (4) east of the sixth principal meridian ; thence south to the south-west corner of Township twenty-one (21) north, of Range four (4) east; thence east to the south east corner of Township twenty-one (21) north, of Range seven (7) east; thence north on the line dividing Ranges seven (7) and eight (8) to the place of beginning; and the territory within said boundaries shall be the county of Cuming.

SEC. 2. That section two (2) of an act entitled "An Act to define the boundaries of Burt, Cuming, and Stanton counties," approved January 10, 1862, and all acts and parts of acts, so far as the same are inconsistent with the provisions of this act, are hereby repealed.

SEC. 3. This act shall take effect from and after its passage.

Approved February 12, 1866.

AN ACT changing the time of holding District Courts in Washington County, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the regular terms of the district court for the county of Washington, shall commence on the first Monday of June and the second Monday of December in each year.

SEC. 2. That all acts and parts of acts contravening this act are hereby repealed.

Approved January 20, 1866.

AN ACT to repeal "An Act to provide for the protection of Crops, and for the destruction of Blackbirds, Crows and Gophers, in the Counties of Cedar, Dixon and Dakota, in the Territory o Nebraska," approved February 7, 1865.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An Act to provide for the protection of crops, and for the destruction of blackbirds, crows and gophers, in the counties of Cedar, Dixon and Dakota, in the territory of Nebraska," approved February 7, 1865, be and the same is hereby repealed; and this act shall take effect and be in force from and after its passage.

Approved January 20, 1866.

AN ACT to enable the Commissioners of Dodge County to raise a Fund to build a Court House.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of Dodge county are hereby authorized to levy and collect a tax of two mills on the dollar from all the taxable property in said county, each year, for a term of ten years, or until, in the judgment of the said commissioners, a sufficient amount has been raised for the purpose of erecting a court house for the use of said county.

SEC. 2. That the said tax shall in all cases be levied at the time and collected in the same manner as is provided by law for the levy and collection of other county taxes.

SEC. 3. That the said county commissioners may, in their discretion, at any time negotiate a loan for a sufficient amount of funds to erect said court house, for the payment of which they may pledge the taxes to be raised as contemplated in this act, or if at any time the said commissioners deem it expedient, they may issue bonds of the said county of sufficient amount to procure the building of said house.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to legalize the Official Acts of the Probate Judge of L'Eau qui Court County, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the official acts of the probate judge of L'Eau qui Court county, appointed in pursuance of an act entitled "An Act to continue the organization of the county of L'Eau qui Court, Nebraska territory," approved February 4, 1865, be and the same are hereby fully legalized and made valid in all respects, the same as if the bond and official oath of said probate judge had been filed in the office of the probate judge of Cedar county, Nebraska.

SEC. 2. That the official acts of the several county and precinct officers, appointed by said probate judge in pursuance of said act, be and the same are hereby legalized and made valid, the same in all respects as if said bond and official oath of said probate judge had been filed in the office of the probate judge of Cedar county, as required by the provisions of said act.

SEC. 3. This act shall be in force from and after its passage.

Approved January 25, 1866.

AN ACT to change the Boundary Lines of Cass and Saunders Counties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following described piece of land, to wit: a strip of land from the north side of Township twelve (12) north, of Range nine (9) east of the sixth (6) prin-
idian, and bounded as follows, viz.: commencing at the north-east corner of
nship, and running south two (2) miles, thence west six (6) miles, thence

north two (2) miles, and thence east six (6) miles, to the place of beginning, is hereby detached from Cass county and attached to and made a part and portion of Saunders county.

SEC. 2. That the county clerk of said county of Saunders is hereby authorized, and it is made his duty to transcribe and record all deeds, mortgages, and other papers, now kept in the office of the county clerk of said Cass county, which any way relate to or affect the title to any lands or personal property in that portion of said Cass county which, by the provisions of this act, is attached to and made a part of said Saunders county, and enter the same upon suitable books for that purpose; and said clerk shall annex a certificate to the said books of record so transmitted by him, to the effect that the same are correct copies from the records in the office of the clerk of said Cass county; which said copies, when so made and certified, shall have the same effect and validity, and the books shall in all respects be regarded and considered as records of said county of Saunders, and the said records and copies, and exemplifications thereof, may be given as *prima facie* evidence in all courts of law and equity, in the same manner as if they had never been transcribed as aforesaid.

SEC. 3. That all judgments or decrees in any court of justice which are liens in said county of Cass, shall in nowise be affected or impaired by the provisions of this act.

SEC. 4. That any and all rights which shall have attached, by virtue of the organization of the said county of Cass, shall not in any way be affected by the provisions of this act.

SEC. 5. This act shall take effect and be in force from and after the first day of July, 1866.

Approved February 12, 1866.

AN ACT to authorize the County Commissioners of Cuming County to provide a fund for certain purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of Cuming county are hereby authorized to levy a tax upon all the taxable property of said county (in such sum as they may deem sufficient), which amount shall not exceed four hundred dollars in the aggregate, for the purpose of procuring books, seals and other necessary apparatus for the use of said county.

SEC. 2. The county commssioners of said county shall levy said tax at the same time, and collect the same in the same manner as is provided by law for the levy and collection of other county taxes: *Provided*, That said commissioners may, in their discretion, cause said tax to be levied in one year, two years, or three years, as by them deemed most expedient.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to provide for a Poor Fund in the County of Douglas, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of the county of Douglas are hereby authorized and required, at the time of levying the taxes for county purposes, in the year eighteen hundred and sixty-six, and annually thereafter, in addition to the taxes now required by law to be levied, to levy a tax upon all the taxable property in said county, not exceeding two mills on the dollar, as they shall determine, which amount so levied shall be collected by the county treasurer, in the same manner as other county taxes are collected, which said money so levied and collected shall be known as the "Poor Fund" of said county, and in all cases shall be paid in lawful money of the United States only, and shall be used only as hereinafter provided.

SEC. 2. That the money raised as is provided in the preceding section shall be under the control of the county commissioners of said county, and may be expended by them in providing support for paupers within the county, and in making such improvements upon the "Poor Farm" of said county as in their judgment shall be deemed best. They may also appropriate such portion of said fund as they may deem advisable toward the payment of any debt or incumbrance which may exist against said "Poor Farm."

SEC. 3. The said county commissioners may draw orders from time to time upon the county treasurer, against said poor fund, for any of the purposes enumerated in the preceding sections, but for none other; and in all such orders so drawn there shall be distinctly stated the purpose to which the same is to be applied, and no order thus drawn shall exceed in amount the funds collected, and at that time standing to the credit of the "Poor Fund" in the county treasury.

SEC. 4. That for the purpose of giving relief to paupers within said county before said tax can be collected, and to enable the county commissioners to make such improvements upon said "Poor Farm" as they shall deem expedient, the said county commissioners are hereby authorized to borrow such sum or sums of money as they shall deem requisite, not exceeding in any one year, in the aggregate, two-thirds of the amount of the tax previously levied in that year, as hereinbefore provided, which money, when so borrowed, shall be paid over to the treasurer of said county, and by him placed to the credit of said "Poor Fund," to be drawn against in the manner provided in section three of this act; but in no case shall said county commissioners pay a higher rate of interest for money so borrowed than ten per cent. per annum.

SEC. 5. All acts and parts of acts conflicting with this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to authorize the County of Douglas to levy a Special Tax for the purpose of erecting Bridges in said County, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of Douglas county are hereby authorized and required to levy and cause to be collected a special tax of seven (7) mills on the dollar valuation upon the taxable property of said county, as assessed and taxed by the authority of said county for the year 1866, for the purpose of erecting a bridge over the Elkhorn river in said county, and other bridges necessary to be built and repaired in the said county of Douglas.

SEC. 2. It shall be the duty of the county commissioners of said county of Douglas to levy said tax for the year 1866 at the same time that the other taxes for said county are levied, as provided by law.

SEC. 3. It shall be the duty of the said county commissioners to erect said Elkhorn bridge at a point on the said Elkhorn river as near to the present crossing of the Union Pacific Railway as may be practicable.

SEC. 4. It shall be the duty of said county commissioners immediately after the passage of this act, to proceed to the erection and completion of said Elkhorn bridge; and if said county commissioners shall not be able to proceed with the building of said bridge without resort to borrowing, they are hereby authorized and required to borrow such an amount of money as may be necessary to ensure the speedy erection of said Elkhorn bridge, and to pledge the special tax authorized by section one of this act for the payment of the money so borrowed and the interest thereon: *Provided*, That the rate of interest on the money so borrowed shall not exceed ten per centum per annum.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to authorize the County Commissioners of Douglas County to Apprentice Minor Paupers.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of the county of Douglas are hereby authorized to bind to apprenticeship any minor who is chargeable to the county as a pauper for maintenance, to some suitable person able to provide for and capable of educating and to teach habits of industry in any trade, or skill in any branch of business deemed proper by such commissioners.

SEC. 2. It shall be the duty of such commissioners to insert in any indenture made for such apprenticeship, clauses compelling the master to treat with kindness and humanity such apprentice, and to properly clothe, feed and educate such apprentice; and shall in writing specify in general terms the provisions made for the benefit of the apprentice, and the duties of the master to the apprentice, and those of the apprentice to his master or mistress: *Provided*, That said commissioners shall in all cases stipulate with the master or mistress that the apprentice shall, at the termination of his or her apprenticeship, receive from the master or mistress a sum not less than one hundred dollars.

SEC. 3. All acts or parts of acts conflicting with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved February 8, 1866.

AN ACT to continue the organization of the County of Buffalo, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the probate judge of the county of Buffalo, territory of Nebraska, is hereby authorized and required to appoint all officers in said county necessary to complete county and precinct organizations; said persons so appointed to qualify before and file their bonds with said probate judge, the same to be approved by him and to be of the same amount and tenor as now provided by law, and to hold their offices respectively until the next general election succeeding their appointment, and until their successors are elected and qualified.

SEC. 2. Said probate judge is further authorized and required to demand and receive all the records, books and papers belonging to said county, and safely keep the same until the proper officer in whose custody they may severally belong, shall have been appointed and qualified as provided in the foregoing section of this act.

SEC. 3. In case of a vacancy in the office of probate judge of said county, any time before the next general election, and before a successor has been elected and qualified, the governor of the territory is authorized to fill said vacancy by appointment; said appointee to hold his office until his successor is elected and qualified. And such person so appointed, before he enters upon the duties of his office, shall file his bond in the office of the probate judge of Hall county, Nebraska; the same to be approved by said judge; and he shall qualify or take the oath of office before any officer authorized generally to administer oaths.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

INCORPORATED COMPANIES.

AN ACT to incorporate the Western Transportation Company, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Granville M. Dodge, Edward Creighton, James P. Peck, Augustus Kountze, Francis Smith, George M. Marshall, their associates, successors and assigns, be and they are hereby created a body corporate and politic under the name and style of "The Western Transportation Company," for the object and purpose of doing a general freight and transportation business, and by that name and style to remain and have succession for the period of twenty years, with power to contract and be contracted with, sue and be sued, plead and be impleaded, defend and be defended against in all courts in this territory and elsewhere; to hold all kinds of property, real, personal and mixed, which they may acquire by purchase or otherwise, and the same to dispose of and convey at pleasure; to have and use or not, a common seal, with right to change the same; and are hereby also invested with all the powers, rights, privileges and immunities necessary and requisite to secure and carry into effect the purposes and objects of this act and promote the object and design of said corporation: *Provided*, *however*, That this act shall confer no exclusive privileges nor any banking powers.

SEC. 2. The capital stock of said company shall consist of three hundred shares of one thousand dollars each, but the said company shall have the right and power from time to time to increase their capital stock to one million dollars, which said capital stock when increased shall be divided into like shares of one thousand dollars each, and may be subscribed for, issued and transferred upon such terms, in the manner and at such places as may be ordered by the board of directors, and no transfer or assignment of stock shall be binding upon or recognized by the company until the same shall have been entered on its books.

SEC. 3. The affairs of said company shall be entrusted to a board of directors, not to exceed nine in number, who shall have the entire management and control of the property, interest and business of the company, subject to such by-laws, rules and regulations, as may be established from time to time by the stockholders. A majority of the directors shall constitute a quorum for the transaction of all business. The board of directors may elect from their number a president, vice president, secretary and treasurer, who shall hold their offices for one year, and until their successors are elected, and shall appoint such other officers and agents, and entrust them with such powers as the said board may deem expedient, who shall hold their respective offices during the pleasure of said board. In case of a vacancy in the office of the board of directors by reason of death, resignation or otherwise, the remaining directors, or a majority of them, may appoint some person from the shareholders to fill such vacancy until the next regular election. If at any time any of the directors shall cease to be a shareholder, his office as a director shall thereby be vacated. And the said company shall also have power, and it is hereby authorized to build bridges and establish ferries over streams not now bridged, nor over which ferries are now established, and to collect such tolls for passing over and on such ferries and bridges as the county authorities may prescribe, and in unorganized counties such tolls as the by-laws of the company may prescribe.

SEC. 4. The principal place for the transaction of the business of said company shall be at the city of Omaha, in said territory, at which place there shall be a meeting of the stockholders of said company within sixty days after the passage of this act, and they shall at that meeting elect from their number a board of directors as above provided, who shall hold their offices for one year, and until their successors shall be elected. The persons herein named as corporators shall act as directors until the time of meeting herein provided for, or others are chosen in their places.

SEC. 5. The stockholders of said company shall have power to make and establish such by-laws, rules and regulations as they may deem necessary for governing, conducting and regulating the affairs of said company, its officers and agents, as are not inconsistent with the provisions of this act and the laws of said territory, and they shall also at their first meeting, fix, by resolution or by-law, the time of holding the annual meetings of said company, at its principal place of business, which time may be changed at any annual meeting thereafter. At all meetings of the stockholders, each stockholder, either in person or by proxy, shall be entitled to one vote on every share of stock held by him in his own name, for the last twenty days prior to said meeting.

SEC. 6. The president, vice president, secretary and treasurer shall perform the usual duties of their respective offices, and shall further discharge such duties as may be enjoined on them from time to time by the board of directors. The president shall also call special meetings of the stockholders of the company whenever requested by the board of directors or by stockholders holding one-third part of the capital stock, and no business shall be transacted at such meetings except such as shall be specified in the call, of which reasonable notice shall be given to the stockholders.

SEC. 7. The directors shall have the right to issue certificates of stock to any person, association or corporation who shall have paid to the treasurer of said company, fifty per centum of the par value of such certificates; the stock so issued to be held subject to such assessments as the board of directors shall thereafter make: *Provided*, That no assessments shall be made which, taken in connection with the previous assessments and the said fifty per centum of the par value of the said stock so as aforesaid paid in, shall exceed the par value of said certificates, without the assent of stockholders owning two-thirds of the capital stock of the company. *And be it further enacted*, That Robert Hawke, William E. Dillon, Ezra S. Hawley, John Heth, John H. Rector, and Dwight J. McCann, their associates, successors and assigns, be and they are hereby created a body corporate and politic, under the name and style of the "Nebraska Transportation Company," for the objects and with the powers granted in the foregoing act, together with all the rights, privileges and immunities conferred upon the incorporators named in said act, and subject to the same provisions and obligations therein stipulated: *Provided*, *however*, That the principal office of said Nebraska Transportation Company shall be located at Nebraska city, Nebraska territory, and that all meetings of the corporators, directors and shareholders of said company shall be held at the place of their principal office. *And be it further enacted*, That Thomas K. Hanna, C. H. Parmlee, William P. Davis, Moses L. White, James R. Porter, Charles L. Cooper and Moses Dodge, their associates, successors and assigns, be and they are hereby created a body corporate and politic, under the name and style of the "Platte Valley Transportation Company," for the objects and with the powers granted in the foregoing act, together with all the rights, privileges and immunities conferred upon the incorporators therein named, and subject to the same provisions and obligations as therein stipulated: *Provided, however*, That the principal office of said company shall be located at the city of Plattsmouth, Nebraska territory, and that all meetings of the incorporators, directors and shareholders of said company shall be held at the place of their principal office.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate Interior Lodge No. 9, of the Independent Order of Odd Fellows, at Pawnee City, Pawnee County, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That W. H. Curtis, A. S. Stewart and J. P. Love, trustees of Interior Lodge No. 9, of the Independent Order of Odd Fellows, and their successors in office, be and are hereby incorporated by the name of Interior Lodge No. 9, of the Independent Order of Odd Fellows of Nebraska, and by which name they shall be capable of suing and being sued, pleading and being impleaded, in all courts, the same as natural persons, and with power to hold and convey real and personal property, and to do any and all other things usually done by corporations created for the sole purpose of benevolence and odd fellowship.

SEC. 2. This act to take effect from and after its passage.

Approved February 9, 1866.

AN ACT to incorporate the Board of Trade of the City of Omaha.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the persons now composing the board of trade of Omaha, Nebraska, are hereby created a body politic and corporate, under the name and style of the Omaha Board of Trade of the city of Omaha, and by that name they and their successors may sue and be sued, plead and be impleaded, receive and hold property and effects, real and personal, of sufficient value to carry on the usual business of boards of trade, and dispose of the same by sale, lease or otherwise; may have a common seal and alter or renew the same at pleasure; may make by-laws for the government of the corporation, not inconsistent with the laws of the land, and may elect and appoint the officers and agents of said corporation for the management of its business.

SEC. 2. Said corporated board of trade may, annually or oftener, elect or appoint from its members, its officers, trustees, directors or managers, at such time and place and in such manner as may be specified in its by-laws, who shall have control and management of the affairs and funds of said association, in accordance with the requirements of their by-laws; and whenever any vacancy shall happen among the officers, trustees, directors or managers, by death, resignation, neglect to serve or otherwise, such vacancy shall be filled in such manner as shall be provided by the by-laws of the corporation.

SEC. 3. In case it shall happen at any time that an election of officers, trustees, directors or managers shall not be made on the day designated by the by-laws, said association, for that cause, shall not be dissolved, but it shall and may be lawful on any other day to hold an election for said officers, trustees, directors or managers, in such manner as may be directed by the by-laws of the corporation.

SEC. 4. Said corporation shall have the right to admit or expel such persons as they may see fit in the manner to be prescribed by the by-laws thereof.

SEC. 5. The present officers of said association shall be officers of the corporation hereby created until their respective offices shall regularly expire or be vacated, or until the election of new officers according to the provisions thereof.

SEC. 6. It shall be lawful for said corporation to take from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts. Said bonds shall be made payable and conditioned as prescribed by the by-laws of said corporation, and may be sued and collected as may be determined by said corporation; and this act shall take effect and be in force from and after its passage.

Approved February 2, 1866.

AN ACT to incorporate the Union Transfer Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Enos Lowe, William W. Marsh, Charles B. Rustin and Frank T. Murphy, their successors, associates and assigns, are constituted a body corporate and politic, by the name of the Union Transfer Company, and by such name may sue and be sued, prosecute and defend in all courts of this territory; may adopt a common seal and alter the same at pleasure; may render the interest of the stockholders transferable, make contracts, acquire possession and transfer property, real, personal and mixed, and may make by-laws and establish rules and regulations necessary for the management of its affairs in accordance with the provisions of this act and not incompatible with an honest purpose.

SEC. 2. The capital stock of the company shall be fifty thousand dollars, and shall be divided into shares of one hundred dollars each, certificates of which to be issued and made transferable as the by-laws of said company shall direct.

SEC. 3. As soon as one-third of the capital stock of said company shall be subscribed for or taken, the holders of such stock may elect a president, secretary and treasurer, who shall constitute a board of directors for the management of the business of the company, and who shall be stockholders of the same, and who shall hold their office until their successors are elected and qualified.

SEC. 4. The company, when organized, shall have the right to transport and convey passengers, baggage, freight, merchandise and property across the Missouri river at all times to and from the several lines of transit terminating at any point or points between the north boundary of fractional Township fifteen north, Range thirteen east of the sixth principal meridian in Nebraska territory, and the south boundary of said Township fifteen: *Provided*, That this act shall not be so construed as to confer upon said corporation any exclusive privileges.

SEC. 5. Said company shall provide all necessary teams, wagons, omnibuses, carts, drays and vehicles for the speedy and safe transfer of passengers, baggage, freight, merchandise and property, to and from the said several lines of transit at all reasonable times within said limits, and shall be entitled to charge, demand and receive such rates, tonnage and compensation therefor as shall be reasonable and just, not exceeding fifteen cents per hundred pounds for freight, and not exceeding fifty cents for each person with ordinary baggage: *Provided*, The tariff of prices adopted and charged by said company for all business transacted within the corporate limits of the city of Omaha, shall not exceed the rate fixed from time to time by the city council of said city: *Provided also*, That the said company shall be liable to all other regulations and ordinances of said city the same as private individuals.

SEC. 6. The property and stock of said company shall be liable for the payment of the debts and liabilities of said company to the full extent of the par value of the same, and the individual property of the members and stockholders of said company shall be liable for all the debts and liabilities of said corporation to the extent of a sum equal to the par value of the capital stock subscribed for, held or owned by them respectively, but no further.

SEC. 7. All elections by said company shall be held and conducted as prescribed by its by-laws, and each share of stock shall be counted as one vote in all elections. The company may assess its share of stock for such purposes and to such extent as the holders of a majority of said stock shall determine, and the stock of the members who shall neglect or refuse to pay assessment so made upon said stock may be sold in such manner as the by-laws of the company prescribe for the payment of all delinquent assessments: *Provided*, That the legislature hereby reserves the right to alter or amend this act at any time: *And provided further*, That the legislature shall have the power to repeal this act at any time after the expiration of a period of twenty years from the date of its passage.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Richardson County Mining Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, and it is hereby enacted by the authority of the same*, That Peter P. Smith, Charles A. Hergesheimer, William R. Cain, Stephen Belliles, Alexander St. Louis, be and they are hereby appointed commissioners to receive subscriptions and to organize a company by the name and style of the Richardson County Mining Company; and the owners of the shares herein authorized to be issued when the company is organized, shall, under the name and style aforesaid, have perpetual succession, and may purchase, hold and acquire, by any lawful means, estate, real and personal, and the same may use, sell, lease, let, mortgage, transfer and convey, and otherwise dispose of, and may sue and be sued, plead and be impleaded, contract and be contracted with, and have and use a common seal, and the same may change at pleasure, and may make by-laws and regulations for the government of their affairs, and may have and use all the rights, powers and privileges which are or may be necessary for them to have as a company incorporated for the purposes herein stated.

SEC. 2. That the purpose of this act is to organize an incorporated company, and to authorize them as such, to prospect for coal and other minerals, sink shafts, work such coal or other mines, prospect for oil, bore oil wells, erect buildings, purchase and introduce machinery, construct roads and bridges, and do whatever else may be incident to and proper for the working and development of such mines and wells.

SEC. 3. That the capital stock of said company shall consist of five hundred shares of twenty dollars each, and the commissioners aforesaid, or a majority of them, may in person or by proxy open books of subscription, at such times and places as they may deem expedient, and when one hundred shares are or shall have been subscribed and five per centum thereon shall have been paid in, the shareholders may elect five or more directors of said company. When it shall have been organized, they may and are hereby authorized and empowered to have and to exercise, in the name and behalf of the company, all the rights, powers and privileges which are intended to be herein given, and may from time to time increase their resources by borrowing money on a pledge of their property or without such pledge, or may increase their capital by new subscriptions, not exceeding twenty-five hundred shares, and any person may subscribe for, purchase and hold shares of said company, with all the rights and subject only to such liabilities as other shareholders are subject to, which liabilities are no more than for the payment to the company of the sums due or to become due on the shares held by them, and when new subscriptions are made, the shares may be issued at par or sold for the benefit of the holders of the shares therefor issued: *Provided*, That when the capital of this corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, or such proportion of the same as may be requisite to satisfy the debts of the company.

SEC. 4. That the by-laws shall prescribe the manner in which the officers and agents of the company shall be chosen, and designate their powers and duties and their term of service and compensation, and said company may establish agencies where they deem advisable; but said company shall not exercise the privileges of banking, nor issue their own notes or bills to be used as bank notes or currency.

SEC. 5. That said company shall not be allowed to make or take any lease for mortgage on real estate for a longer term than fifteen years unless renewed, and they shall also have their principal office or place of business at Rulo, Richardson county, in this territory, and at least two of the directors provided for in this act shall be residents of this territory.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Credit Foncier of America.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, and it is hereby enacted by the authority of the same,* That John M. S. Williams, James H. Bowen, Augustus Kountze, George Francis Train and George T. M. Davis, be and they are hereby appointed commissioners to receive subscriptions and to organize a company by the name and style of the "Credit Foncier of America," and the owners of the shares herein authorized to be issued when the company is organized, shall, under the name and style aforesaid, have perpetual succession, and may purchase, hold, and acquire, by any lawful means, estate, real and personal, and the same may use, sell, lease, let, mortgage, transfer and convey, and otherwise dispose of, and may sue and be sued, plead and be impleaded, contract and be contracted with; and to have and use a common seal, and the same may change at pleasure, and may make by-laws and regulations for the government of their affairs, and may have and use all the rights and powers and privileges, which are or may be necessary for them to have as a company incorporated for the purposes herein stated.

SEC. 2. That the purpose of this act is to organize an incorporated company, and to authorize and empower them as such to erect cottages, dwellings, stores, warehouses, public and private buildings, develop salt and other mineral mines, prospect for coal, bore artesian wells, plant forest trees, found emigration colonies, and to become an agency for the purchase and sale of all manner of buildings, railroad bonds and other securities, and to make advances of money and of credit to railroad and other improvement companies, and to aid in like manner contractors, manufacturers and builders; and to authorize them as a company to make all requisite contracts, and especially to receive and hold on deposit and in trust, estate, real and personal, including the notes, bonds, obligations and accounts of states, counties, cities, territories, and of individuals, and of companies and corporations, and the same to purchase, collect, adjust and settle, and also to sell and dispose thereof in any market in the United States or elsewhere, and for such price and on such terms as may be agreed on between them and the parties contracting with them, and also to do any and all other business that an individual capitalist can legally do: *Provided*, That said company shall not execute any lease for a greater period of time than fifteen years: *And provided further*, That said company shall not hold more real estate in this territory than may be necessary for the transaction of the business of the corporation.

SEC. 3. That the capital stock of said company shall consist of one hundred shares of one thousand dollars each; and the commissioners aforesaid, or a majority of them, may in person or by proxy, open books of subscription, at such times and places as they may deem expedient, and when one hundred shares are or shall have been subscribed, and five per centum thereon shall have been paid in, the shareholders may elect five or more directors, two of whom shall reside in this territory; and the directors aforesaid of said company, when it shall have been organized, may, and they are hereby authorized and empowered to have and to exercise, in the name and behalf of the company, all the rights, powers and privileges which are intended to be herein given; and may from time to time increase their resources by borrowing money on a pledge of their property, or without such pledge; or may increase their capital by new subscriptions, not exceeding one thousand shares; and any citizen or subject, company or corporation, of any state, territory or county, may subscribe for, purchase and hold shares of said company, with all the rights, and subject only to such liabilities as other shareholders are subject to, which liabilities are no more than for the payment, by each shareholder, of the full par value of each share of capital stock held or subscribed by him; and when new subscriptions are made, the shares may be issued at par, or sold for the benefit of the holders of the shares therefor issued: *Provided*, That no foreign corporation shall subscribe for or hold a majority of the capital stock of said company.

SEC. 4. That the by-laws shall prescribe the manner in which the officers and agents of the company shall be chosen, and designate their powers and duties, and their term of service and compensation; and said company may establish offices and agencies in any part of the United States, Europe and elsewhere, and may deal in exchange, foreign and domestic; but the company shall not exercise the privilege of banking, nor issue their own notes or bills to be used as bank notes or as currency: *Provided*, That the main office of said company shall be in the city of Omaha.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Omaha German Reading Association.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Henry Grebe, Conrad Schaefer, Henry Heidelberger, and Julius Rodowsky, and their successors in office, be and they are hereby created a body politic and corporate, under the name and style of Omaha German Reading Association, (Letze Verein), and by said name may have perpetual succession, with full power to plead and be impleaded, to sue and be sued, acquire, hold and possess property, real and personal and mixed, and to use, manage and dispose of such property as they may deem to the interest of the corporation.

SEC. 2. Said corporation shall have power to make all needful rules and regulations for the government of the same: *Provided*, They do not conflict with the laws of the United States and of this territory, and may have a common seal and alter the same at pleasure.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to incorporate the Arago Schuetzenverein.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Nicholas Lippold, Conrad Klingelhœfer, J. F. Frefzer, John Sudron, Louis Deininger, John Deininger, George Herschberger, Michael Michel, William Saloman, August Neitzel, Charles Neitzel and Adolf Stock, and their successors, together with such members as they may hereafter admit, are hereby made a body corporate and politic, to be known by the name and style of the Arago Schuetzenverein.

SEC. 2. The said company may sue and be sued, plead and implead, may have and use a common seal and alter the same at pleasure, and may acquire and hold property, real or personal, to the amount of fifteen hundred dollars.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to repeal an Act entitled "An Act to provide for the Erection and Incorporation of the Johnson County Seminary."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An Act to provide for the erection and incorporation of the Johnson County Seminary," be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to incorporate Keystone Chapter No. 2, Royal Arch Masons, at Nebraska City, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Charles A. Place, D. P. Rolfe and John Reed, trustees, their associates and successors, are hereby created, constituted and declared a body corporate and politic, by the name and style of "Keystone Chapter No. 2, Royal Arch Masons."

SEC. 2. The above named persons are hereby appointed trustees of said chapter, and shall continue in office until the next regular election held in pursuance of the by-laws of said chapter.

SEC. 3. That by the same name and style, said corporation may have perpetual succession, and shall be capable of suing and being sued in all courts of law and equity, may have and use a common seal, and may be capable in law of acquiring, holding and conveying property, real, personal and mixed, for the use of and to further the interests of said chapter; and shall have power to make all needful rules and regulations for the government of the same.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved February 1, 1866.

AN ACT to incorporate the Washington County Mining Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That E. N. Grinnell, G. W. Willson, Edward Creighton, J. P. Smith, Herman Kountze, Taylor Bradley, Gerd Monnick, S. A. Megeath, Thomas Gibson, and their successors, associates and assigns, be and they are hereby created a body corporate, by the name and style of the "Washington County Mining Company," and by that name and style shall be capable in law of contracting and being contracted with, of suing and being sued, defending and being defended against, in all courts of law and equity, and in all matters whatsoever, with full power to acquire, hold, occupy, lease and enjoy all such real and personal property as may be necessary in the prosecution, operation and usefulness of the work of said company; and they may have and use a common seal, and the same alter at their pleasure, and may ordain and establish all such by-laws, rules and regulations, as by the board of directors may be deemed necessary for the good government of said company, its officers, agents and employees, and the prudent and efficient management of the affairs of the company aforesaid. The concerns of said company shall be managed by a board of directors, not exceeding nine in number, who shall be shareholders. Said directors shall have authority to choose the officers of said company, and fix their term of office, and prescribe their duties, and make all by-laws, rules and regulations.

SEC. 2. The object of said company shall be to prospect for coal, to open and work coal mines, to buy and sell coal, and to do and carry on such business as is usually transacted by companies engaged in mining for coal. They shall keep their main office at the city of Omaha, Nebraska territory.

SEC. 3. The capital stock of said company shall be one hundred thousand dollars, which said capital stock shall be divided into shares of one hundred dollars each, to be assessed and transferred in manner as may be prescribed by the by-laws of said company.

SEC. 4. The persons herein named as incorporators, are hereby appointed commissioners to open books for subscription to the stock of said company, at such times and places as may be agreed on by them; and as soon as ten per cent. of the capital stock aforesaid shall have been paid in or secured to the satisfaction of the said commissioners, they shall call a meeting of the stockholders for the purpose of electing a board of directors for the next ensuing year. And at all meetings of the company, each stockholder shall be entitled to cast one vote, in person or by proxy, for each share of stock he may own in said company.

SEC. 5. When the board of directors are elected and qualified, the said commissioners shall deliver to the said directors, all moneys, property, books, papers and other effects, belonging to said company.

SEC. 6. *Provided*, That the legislature hereby reserves the right to alter or amend this act at any time from and after the date of its passage.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Brownville, Tecumseh, Beatrice and Big Sandy Wagon Road Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following named persons, to wit: S. P. Majors, Latham Hoadley, O. B. Hewett, John L. Carson, A. W. Morgan, A. P. Cogswell, John McPherson, William Hackney, S. R. Jamison, T. W. Tipton, William F. Den, R. F. Barrett, Theodore Hill, David Ellis, Herman Utecht, J. E. Crow, W. A. Presson, James M. Wood, Robert Howard, John Latham and James Slaughter, and such associates and successors as they may elect, are hereby created a body politic and corporate under the name of "The Brownville, Tecumseh, Beatrice and Big Sandy Wagon Road Company," with capacity to sue and be sued by such name, in any court in this territory.

SEC. 2. The said corporation shall have power and authority to raise funds by subscription or contribution and to expend the same at such place and in such manner as to it may seem proper in improving the public highway running from Brownville in Nemaha county westward, *via* Tecumseh in Johnson county, and Beatrice in Gage county, to Big Sandy in Jones county, and in building or repairing bridges on said highway.

SEC. 3. All such bridges or improvements made by said corporation, shall be begun and finished under the direction and control of such county or city officers as now have the legal charge of said road or portion of said road, and the title and control of such bridges and improvements, shall from their commencement vest as part of the said public highway; and the said corporation shall at no time be liable in any action for damages, at the instance of any person whomsoever, arising in consequence of the building or repairing of said bridges or the making of said improvements, or from any portion of said road or any of said bridges being out of repair or imperfect: *Provided*, That nothing in this act shall absolve the several counties through which the said road shall be located, from liability for any damages sustained by a neglect to keep the same in repair and good condition.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Pittsburg and Platte Valley Mining Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John Groff, James I. Bennett, Robert H. Marshall, Joseph Groff, P. H. Eaton, William Ewing, James Bailey, David Robison, Jr., Robert Kittle, Vincent Kummer, S. S. Caldwell, William Ruth, A. S. Paddock, John McCormick, Alfred Burley, John I. Reddick, Clinton Briggs, and their associates, successors and assigns, be and they are hereby created a body corporate, with perpetual succession, and such corporation shall have power to acquire, possess, hold, enjoy and dispose of real and personal property, for the purposes in the next section mentioned, to have and use a common seal or not at pleasure, to sue and be sued in law or equity, and to exercise all the powers necessary to carry into full effect the objects and purposes of this company.

SEC. 2. The object and business of the company shall be to ascertain by practical tests and operations, the mineral deposits and resources of the Platte valley, and in such other parts of the territory as it shall deem expedient for the purpose of developing coal, petroleum, salt and such other mineral substances as may be discovered, and to mine, work, manufacture, transport, sell and dispose of the same, and the principal office for the transaction of its business shall be at Omaha: *Provided*, This act shall confer no exclusive privileges in the matters aforesaid, nor any banking powers on this company.

Sec. 3. The capital stock of the company shall consist of two hundred shares of one hundred dollars each; but the company shall, from time to time, have power to increase the capital stock to any sum not exceeding five hundred thousand dollars: *Provided*, That the liability of the stockholders for the debts of the company shall extend to the amount of stock by them subscribed or held respectively, but no further; and no transfer or assignment of stock shall be binding on or recognized by the company until the same is entered on its books.

Sec. 4. There shall be elected a board of directors, which shall consist of seven shareholders, a majority of whom shall constitute a quorum to do the business of the company; and there shall also be elected, by and from the members of said board, a president, secretary and treasurer, who shall perform the usual duties of such officers; and in the election of said board, and at all meetings of the company, each shareholder shall be entitled to cast as many votes, either in person or by proxy, as he shall have shares of stock, and the persons representing a majority of all the stock, shall constitute a quorum to do business at all meetings of the company.

Sec. 5. Within thirty days after the passage of this act, the incorporators, or any three of them, may, at the county clerk's office in Omaha, open books for the subscription of stock, and when twenty thousand dollars shall have been subscribed, and ten per cent. of the same paid in, it shall be the duty of the persons subscribing said stock, or representing the same, to meet at said clerk's office and organize the company by the election of said board of directors, and from that time said company shall be deemed fully organized and vested with the powers hereby conferred.

Sec. 6. The board of directors shall have power at any time to require the payment in cash of the full amount of the stock subscribed, or make such assessments as they shall deem proper, and any shareholder or subscriber of stock who shall fail or refuse to pay the amount thus required to be paid by him, after twenty days notice to him, the stock so held by him shall be sold for the benefit of the company.

Sec. 7. The board of directors, president, secretary and treasurer, shall hold their offices for one year and until their successors are elected. All certificates of stock, all evidences of indebtedness, all conveyances of real estate, and all contracts, shall be executed in the name of the company and be signed by the president and secretary.

Sec. 8. The company shall have power to make such by-laws as it shall deem expedient, not inconsistent with this act and the laws of the territory; to fix the time and place of holding the meetings of the company; to more fully prescribe the duties of the officers, and generally to provide for and regulate all matters which may subserve the interests of the company.

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

AN ACT to incorporate the Omaha Insurance Company.

Section 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John McCormick, Miiton Rogers, Will R. King, James J. Brown, Samuel A. Megeath, Edward Creighton, Alfred Burley, Augustus Kountze, M. Hillman and L. C. Huntington, their associates, successors and assigns, be and they are hereby created a body politic and corporate, with powers of twenty-five years succession, under and by the name and style of the "Omaha Insurance Company," and by that name and style shall be competent to contract and be contracted with, and be capable in law of suing and being sued, of pleading and being impleaded, of answering and being answered unto, in all courts and places and in all matters and things whatsoever.

Sec. 2. Said corporation may have and use a common seal, which they may alter, change and revoke at their pleasure, and are also hereby invested with all the powers, rights, privileges and immunities, necessary and requisite to secure and carry into effect the object and purposes of this act, and promote the object and design of said corporation, and may also establish and adopt such by-laws, rules and regulations for the good government and prudent and efficient management of said corporation, its officers, agents and employees, as to its managing agents shall seem best: *Provided*, That no such by-laws, rules or regulations shall conflict with the laws of this territory.

SEC. 3. The capital stock of said company shall be one hundred thousand dollars, to be divided into shares of one hundred dollars each, to be paid in such installments as the directors chosen under this act may from time to time direct, or as may be agreed upon between said company and the stockholders, under such penalties as the directors may, in their discretion, order and appoint. The said capital stock may hereafter be increased to an amount not exceeding five hundred thousand dollars, at the discretion of a majority of the board of directors, which said capital stock, when so extended, shall be divided into like shares of one hundred dollars each. All of said capital stock shall be subscribed for, issued, assessed, and be assignable, and be transferable, as by the said board of directors shall be determined and ordered, but no assignment or transfer shall be recognized by, or binding upon said company, until the same has been entered upon its books.

SEC. 4. The corporation hereby created shall have full power and authority to make marine insurance upon vessels, steamboats, goods, wares and merchandise, and all other kinds of property, on any of the lakes, rivers and navigable streams and waters in any of the United States or territories, and against losses upon all kinds of personal property in course of transportation, from any place in this territory to any place within or without this territory. They shall also have full power and authority to insure against losses by fire on buildings of any kind, and on goods, wares and merchandise, stock, moneys or other property in any of the United States or territories thereof, and also against losses on goods, wares and merchandise, stocks, moneys, freights or other property transmitted by railroad or otherwise, and to loan any of their surplus capital, at such rates of interest as is or may at any time be allowed by law, and they may also cause themselves to be reinsured against any maritime risks upon which they may have taken risks, and upon the interest and risks which they may have, or may have taken in any vessels, goods, wares and merchandise, stocks, moneys, freights, buildings or other property.

SEC. 5. All policies of insurance by them made shall be subscribed by the president, or in case of his death, by the vice president, and countersigned by the secretary of said company, pursuant to such by-laws and rules as may be prescribed in relation thereto by the board of directors; and all losses under any policy, so subscribed and countersigned, may be adjusted and settled by the president and board of directors.

SEC. 6. The said company shall not issue any policy by virtue of this act, or do any insurance business whatsoever, until one-fourth part of the capital stock shall have been actually paid in.

SEC. 7. Said company shall not issue any bank bill or bills, or any checks, certificates of deposit or evidences of debt in the form or similitude of money, to pass as a circulating medium, nor shall they directly or indirectly buy, sell, or deal in buying or selling goods, wares and merchandise in any manner whatsoever. But the directors may, at their option, invest the capital stock of said company, or so much thereof as they shall deem prudent, in the public stocks and bonds of the United States, or any of the states or territories thereof, or in the bonds or warrants of any county or incorporate town or city in any of said states or territories, or in the stock or bonds of any corporation, insurance or trust company, and may sell and reinvest the same at their option, or may loan their said capital stock on mortgage or other security, in such sums and for such times as they shall deem prudent, at any legal rate of interest.

SEC. 8. Said corporation may purchase and hold such real estate as may be necessary for the transaction of its business, and to take and hold by purchase on any sale or any decree or judgment of any court of law or equity, on any debt due to said corporation, or to take or hold in trust to secure any debt due to said corporation, and to take or receive any real estate in payment or satisfaction of any debt previously contracted or due to said company, and to sell and convey, mortgage or lease, all of its real estate in such manner and for such sums, and during such time as said board of directors may deem for the best interests of said company. All conveyances of real estate of said corporation shall be in pursuance of a resolution of the board of directors, and shall be in the name of said corporation, and executed and acknowledged by the president of the board of directors, or in case of death or absence, by the vice president, or in case of the death or absence of both president and vice president, by a majority of the board of directors, under the seal of said corporation.

SEC. 9. The corporation herein above named, their successors and assigns, or a majority of them, shall meet as soon after the passage of this act as may be determined by them, at such time and place in the city of Omaha as they shall deem best, and open books of subscription of said corporation, under such rules and regulations, and with such conditions as they shall think proper and just, and shall also make all needful rules and regulations for the election of a board of directors of said company. In all elections of directors of said company, the stockholders, either in person or by proxy, shall be entitled to one vote for each and every share of stock that he or she may own in their own name in said company. The directors of said company, first chosen, as well as those may be subsequently chosen, shall be stockholders of the company, and shall hold their office for one year and until their successors are chosen and qualified. If at any time any of the directors shall cease to be stockholders, his office shall thereby, *ipso facto*, be vacated. There shall be ten directors elected at the first meeting for the election of directors, which number may be increased or diminished by the by-laws of said company. Three weeks notice shall be given of all meetings for the election of directors, by the publication in some public newspaper in the city of Omaha, which city shall be the principal place for the transaction of the business of said company.

SEC. 10. The entire management and control of the stock, property, business and concerns of said corporation shall be intrusted to the board of directors, subject to such by-laws, rules and regulations as shall be made by them, as aforesaid. A majority of the board of directors shall constitute a quorum for the transaction of business. They shall elect from their number a president and vice president, and shall appoint a secretary and treasurer, and such other officers, agents and employees as they shall think proper, and fix their compensation; who shall hold their respective appointments during the pleasure of said board. They shall prescribe the duties to be performed by their respective officers, and shall have power to take such bond or bonds, in such sums and on such conditions, from the officers, agents and employees of said company, as they may deem proper, and shall publish annually, in the month of January, a full and complete statement of the affairs of said company, as required by the laws of this territory, and may declare annual or semi-annual dividends of the profits of said company. In case of a vacancy in the office of director, by reason of death, resignation or otherwise, the remaining directors, or a majority of them, may appoint some person from the shareholders to fill such vacancy till the next regular election. They shall also have power to call special meetings of the shareholders of said company, when requested by the stockholders representing two-thirds of the capital stock subscribed, and also when in their judgment the interests of said company require. Such special meetings shall be called as is hereinbefore prescribed for calling meetings for the election of directors.

SEC. 11. In case of any loss or losses taking place, which shall be equal to the amount of the subscribed capital stock of said company, and the board of directors, after such loss or losses having taken place shall issue any policy of insurance, their estates jointly and severally shall be liable for every loss that shall accrue under such policy or policies: *Provided*, That the legislature hereby reserves the right to alter or amend this act at any time after the expiration of a period of ten years.

SEC. 12. This act is hereby declared to be a public act, and shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Omaha Gas Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Robert W. Wilson and John Patrick, their associates, successors and assigns, are hereby created a body corporate and politic, under the name and style of the Omaha Gas Company, who shall have succession for twenty years; and by that name may be and are hereby made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended against, to have and use a common seal, the same to renew, and alter the same at pleasure; and shall have and are hereby vested with all the powers, privileges and immunities which are and may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth; and the said company shall have full power to acquire, hold, occupy and enjoy all such real, personal and mixed property as may be necessary and proper for the construction, extension and usefulness of the works of said company; and to locate, construct and finally complete a gas works in the city of Omaha, and to enlarge and extend the same, as they may deem necessary: *Provided*, That the company shall commence said works within six months and complete the same within two years from the passage of this act.

SEC. 2. The capital stock of said company shall consist of one thousand shares of one hundred dollars each, and so soon as the said capital stock shall have been subscribed, and five per centum paid in thereon, the shareholders may call a meeting and elect a board of three or more directors, and stockholders shall be entitled to one vote, either in person or by proxy, for each share held.

SEC. 3. The directors of said company shall be empowered and authorized to adopt such by-laws and regulations as they may deem necessary for the management of the affairs of said company: *Provided*, That they shall pass no law or regulation by which the shareholders shall be made liable for any amount more than their subscription, or the amount due thereon; nor shall they pass any by-law, rule or regulation which shall conflict with the laws of this territory, or the provisions of this act, or with the ordinances of the city of Omaha.

SEC. 4. The directors of said company shall be empowered and authorized to appoint such agent or agents, officers and managers as they may deem necessary for the interests of said company and the conducting of the same.

SEC. 5. The said company shall not, under penalty of forfeiture of this charter, charge any other higher rates of tariff for gas by them furnished to persons or companies, than shall be prescribed by ordinance or resolution of the city council, and shall at all times be subject to the rules and regulations which may from time to time be prescribed by ordinance or resolution of the city council of the city of Omaha.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to incorporate the Missouri Colonization Society.

WHEREAS, said Missouri Colonization Society has heretofore existed in the city and county of St. Louis, state of Missouri, with the object of securing homesteads for its members, and for that purpose has acquired town lots in and land near to the town of St. Helena, Cedar county, territory of Nebraska, and to encourage and strengthen this enterprise,

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Ferdinand Gottschalk, William H. Moeller, Auguste Campe, Henry Werz, William Stugk, Julius F. Schneider and Frederic Mosberger, of the city and county of St. Louis, state of Missouri, and Peter Jenal and Henry Felber, of Cedar county, territory of Nebraska, shall constitute the first board of directors of said society, and they shall be and are hereby created a body politic and corporate, under the name and style of the "Missouri Colonization Society," and by that name shall have perpetual succession, may sue and be sued, contract and be contracted with, may take and hold real estate in said Cedar county, not exceeding six hundred and forty acres in the aggregate, and may sell, convey, exchange and dispose of the same by deed or grant, and may have a common seal and alter the same at pleasure.

SEC. 2. Said directors or their successors may pass such by-laws and regulations as may be necessary and expedient to accomplish the purpose of said society: *Provided*, That they be not contrary to existing laws; and they shall select from their number a president, vice president, secretary and treasurer, and they shall remain in office until their successors are elected and qualified. A majority of said directors shall constitute a quorum, and may fill vacancies by their appointment. An election of directors shall take place every year during the month of October, and a notice published in one or more newspapers in the city of St. Louis, three days before an election or meeting of said society, shall be sufficient notice to all its members.

SEC. 3. As soon as twenty-five members of the society are residents of said town of St. Helena, the government and directors of said society shall be there, and within three years thereafter, all the property and estate, real and personal, of said society, remaining undisposed of, shall belong to the inhabitants of said town of St. Helena, and this society shall be dissolved.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 1, 1866.

AN ACT to incorporate the Peru Seminary and College.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That William Dailey, J. F. Neal, Hiram Burch, W. W. Smith, D. C. Cole, J. J. Leach, T. H. Amsden, Giles Reader and Joseph Foote, are hereby created a body corporate and politic, under the name and style of the "Peru Seminary and College," with perpetual succession, and under their corporate name may sue and be sued, plead and be impleaded in all courts of law and equity, may have a corporate seal, and may alter the same at pleasure, may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise or otherwise, with full power to sell and dispose of the same at pleasure, together with all the things necessary for the accomplishment of the objects of this corporation, which do not contravene the laws of Nebraska or the United States.

SEC. 2. The above named persons are hereby created a board of trustees of said Peru Seminary and College, and shall hold their office until their successors are elected, as hereinafter provided, and said trustees are hereby authorized to organize by the election of a president, secretary and treasurer. Said board of trustees shall, within one year from the date of the passage of this act, divide by lot their number into three classes. The first class shall hold the office of trustee for one year, the second class for two years, and the third class for three years.

SEC. 3. The said board of trustees shall have power to appoint a president, professors and teachers, and all other necessary agents and officers, and may fix the compensation of each.

SEC. 4. Said board of trustees may enact such by-laws as they may deem necessary for the government of the corporation or the school in its various departments, not inconsistent with the laws of Nebraska or the United States.

SEC. 5. Said board of trustees shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by the colleges and universities of the United States, whenever one hundred students shall have been regularly graduated in the college course.

SEC. 6. All vacancies occurring in the board of trustees shall be filled upon the recommendation of a majority of the board of trustees by the members of the Nebraska Annual Conference of the Methodist Episcopal Church, when in conference assembled.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to incorporate the Nebraska Annual Conference of the Methodist Episcopal Church, and for other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the Nebraska Annual Conference of the Methodist Episcopal Church is hereby created a body corporate and politic, and under the above title shall be legally capable of contracting and being contracted with, of suing and being sued in all courts of law and equity, and may have a common seal or not, and break the same at pleasure, and shall have perpetual succession, and are hereby empowered to hold, enjoy, dispose of and convey all kinds of property, real, personal or mixed, which they may acquire by purchase, donation, bequest or otherwise, for the purpose of carrying out the instructions of said church, which shall be for benevolent, educational and religious purposes, and no other.

SEC. 2. Said corporation shall consist of all the ministers in good and regular standing and in full connection in said annual conference at any time, and no others.

SEC. 3. Said corporation shall have power to elect a president, secretary and treasurer, with such other officers as may be deemed necessary, whose term of office shall be for one year or until their successors shall be elected.

SEC. 4. The said corporation shall be empowered to enact such by-laws, rules and regulations as may be deemed necessary for its own government and the management of its financial and other affairs, not inconsistent with the rules of the Methodist Episcopal Church, the laws of the territory of Nebraska or the laws of the United States.

SEC. 5. The regular annual meetings of said corporation for the election of officers and for the transaction of business, shall be at the place and during the time of the regular annual meetings of said conference, and at no other time or place. The hour for the meeting of said corporation shall be decided by resolution in open conference.

SEC. 6. For the sale of real estate it shall require the consent of two-thirds of all the members of the corporation present and voting; and the deed therefor shall be signed by the president and secretary of said corporation. This corporation is authorized to purchase or receive as gifts or donations, real estate, but that all real estate, except so much as may be necessary to carry on the business of the corporation not to exceed eighty acres, shall be sold as often as once in twenty-five years for the benefit of such corporation.

SEC. 7. *And be it further enacted*, That the societies of the Methodist Episcopal Church in the territory of Nebraska, shall by this act be authorized to conduct the financial affairs of said church according to the rules and regulations of the discipline of said church.

SEC. 8. And the societies of said church are hereby authorized to appoint or elect their boards of trustees in accordance with the rules and regulations of said church as laid down in the published discipline of said church.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

FERRIES.

AN ACT to establish a Ferry across Platte River, in Sarpy and Saunders Counties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Washington Green, William O'Neal and J. D. Smith, their heirs and assigns, are hereby granted the exclusive privilege of establishing and keeping a ferry across the Platte river, at a point where the territorial road from Forest City in Sarpy county to the south line of Lancaster county crosses said river, and within two miles above or two miles below said point of crossing. The exclusive right is hereby granted to extend for the period of ten years: *And provided*, That the legislature hereby reserves the right to alter or amend this act at any time.

SEC. 2. That it shall be the duty of the said Washington Green, William O'Neal and J. D. Smith, their heirs and assigns, within six months from the passage of this act, to provide, keep and run within said limits a good and substantial boat or boats for the safe transportation of persons and property at all times when said river is passable. In case the conditions of this section are not complied with, this charter shall be void.

SEC. 3. That the said Washington Green, J. D. Smith and William O'Neal, their heirs and assigns, shall be allowed the following rates for ferriage, subject, however, to alteration by future legislation:

For two horses, mules or oxen, and wagon	$1.00
" each additional pair of horses, mules or oxen	.50
" " horse or mule, and rider	.50
" one or two horses or mules, and buggy	.75

For loose cattle, horses or mules, per head	$ .25
" sheep and swine, per head	.10
" each thousand feet of lumber	1.00
" " footman	.25

SEC. 4. Nothing in this act shall be so construed as to conflict with any privilege or privileges heretofore granted.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 8, 1866.

AN ACT to authorize Zachariah J. Parsons to establish and keep a Ferry across the Missouri River at Rulo, in Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Zachariah J. Parsons, his heirs and assigns, are hereby granted the exclusive privilege to establish and keep a ferry across the Missouri river at Rulo, in Richardson county, at any point or points embraced within two and one-half miles up the said river from the foot of Baylis street in Rulo, and one and one-half miles down the river from said point, for the term of fifteen years.

SEC. 2. That said Zachariah J. Parsons, his heirs and assigns, shall be allowed the following rates of ferriage:

For two horses, mules or oxen, and wagon	$1.00
" each additional pair of horses, mules, oxen and wagon	.25
" " horse or mule, and rider	.30
" " " " led	.25
" loose cattle, per head	.10
" each footman	.10
" sheep and hogs, each head	.05
" each one hundred pounds freight	.10
" " one thousand feet of lumber	2.00

SEC. 3. It shall be the duty of the said Parsons, his heirs and assigns, to keep a reliable boat or boats on said stream for the safe transportation of passengers and property at all reasonable times.

SEC. 4. This act to take effect from and after its passage.

Approved February 5, 1866.

AN ACT to authorize John S. Goss and associates to establish and keep a Ferry across the Missouri at Fort Calhoun.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John S. Goss and Austin W. Beals, their associates and assigns, are hereby authorized to establish and keep a ferry across the Missouri river at Fort Calhoun, or at any point for five miles above or five miles below said town, distance to be measured by the course of the river, with the exclusive privilege within said limits for the term of twenty-five years.

SEC. 2. That said John S. Goss, Austin W. Beals, and their associates and assigns, shall be allowed the following rates of ferriage:

For two horses, mules or oxen, and wagon	$1.00
" each additional pair of horses, mules or oxen	.25
" " horse or mule, and rider	.50
" " horse or mule, and buggy	.75
" " led horse or mule	.25
" loose cattle, per head	.10
" sheep or hogs, per head	.05
" each footman	.10
" " hundred weight of freight	.10
" lumber, per thousand feet	2.00

SEC. 3. If the said Goss and Beals, or their associates or assigns, or any person in their employ, shall charge a higher rate of toll than is here allowed, and collect the same, he or they, upon conviction thereof, shall forfeit and pay to the party aggrieved the sum of five dollars for each offense, and suit for the same shall be commenced and prosecuted in the name of the party so aggrieved before any tribunal having jurisdiction under the general laws.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved February 5, 1866.

ROADS.

AN ACT to legalize the acts of Charles H. Walker, of Saunders County, John P. Loder and Richard Wallingford, of Lancaster, as Road Commissioners.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the acts of Charles H. Walker, of Saunders county, John P. Loder and Richard Wallingford, of Lancaster, as commissioners, in and about the location of a territorial road from Forest City in Sarpy county, to the south line of Lancaster county, shall and the same is hereby declared to be as legal and binding in law and of the same force and effect as though they had been done and performed in conformity with an act entitled "An Act to locate a territorial road from Forest City, in Sarpy county, to the south line of Lancaster county," approved February 13, 1865.

SEC. 2. *And be it further enacted*, That the survey and plat of said road returned to the clerks of the several counties through which said road was located by said commissioners shall be of the same force and effect and as binding in law as though said acts had been in conformity with said act; and the road as located by said commissioners is hereby declared to be and the same is in all respects a legal road; and all supervisors of highways through whose district respectively said road runs are hereby required to open and prepare said road for public use at the earliest practicable time.

SEC. 3. That the costs and expenses of locating said road shall be paid in accordance with said act entitled "An Act to locate a territorial road from Forest City, in Sarpy county, to the south line of Lancaster county," the same as though said road had been laid in conformity with said act.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to legalize the location of a Territorial Road from the City of Plattsmouth, in Cass County, to intersect the Territorial Road in Section No. Three (3) in Township No. Nine (9) north, of Range No. Six (6) east of the Sixth principal Meridian, in Lancaster County, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the action of Thomas K. Hanna, A. C. Mayfield and William Reed, who were appointed locating commissioners by an act of the legislature, approved January 24, 1865, which was an act entitled "An Act to locate a territorial road from Plattsmouth City, in Cass county, to intersect the territorial road immediately south of the Salt Basin, and west of Salt Creek, in Lancaster county," in locating said road, be and hereby is declared to be lawful in all respects the same as though the said road had been located by said commissioners at the exact time and in exact accordance with the said act made and provided for as aforesaid.

SEC. 2. That the said commissioners, or any two of them, on or before the first day of May next, shall file in the office of the county clerk of the said counties of Cass and Lancaster, a certified plat of said road as surveyed and located by them, and from the date of the filing thereof the same shall be considered and held to be a public road, and it shall be the duty of the supervisors of roads through whose district the said road shall run, to open the same through their respective districts for public travel at the earliest practicable period.

SEC. 3. That said commissioners, surveyor and assistants, be allowed the same compensation as allowed by said act appointing said commissioners, to be paid as in said act provided.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866.

N ACT to locate a Territorial Road from the north line of the City of Omaha, to intersect the Territorial Road running to Fort Calhoun, in Washington County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That George Smith, Frank Dellone and Jonas Gise, be and they are hereby appointed commissioners to view and locate a territorial road from the north line of Omaha, running due north as nearly as practicable on the half section line, and to intersect the territorial road running to Fort Calhoun in Washington county at the centre of section thirty-three, Township sixteen north, of Range 13 east, in said Douglas county.

SEC. 2. The said commissioners, or a majority of them, shall meet at the city of Omaha on or before the first day of May, 1866, or within four months' thereafter; and after taking an oath to faithfully and impartially discharge their duties as commissioners, they shall proceed to survey and locate the road as provided in section one of this act, and shall mark the same by substantial oak or walnut stakes.

SEC. 3. The said commissioners shall have power to employ one competent surveyor, one team and teamster, and as many assistants as they shall deem necessary, to locate and establish said road, and shall, within thirty days after completing the survey of said road, file with the county clerk of Douglas county a plat of the same, which shall be recorded by him in his office, and the said road shall thereupon become and be a permanently established public road.

SEC. 4. Said commissioners shall receive three dollars per day, the surveyor four dollars per day, the team and teamster four dollars per day, and the other necessary help two dollars per day, for the time necessarily employed, which several amounts shall be allowed by the county commissioners and paid by said Douglas county.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to change the location of a portion of the Territorial Road leading from St. Stephens to a point on the Military Road from Leavenworth to Fort Kearney.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that portion of the territorial road leading from St. Stephens to the military road from Leavenworth to Fort Kearney, beginning at Table Rock, in Pawnee county, thence east to the east line of said county, together with all other roads located on the same land, be and the same are hereby vacated.

SEC. 2. Robert Taylor and Peter G. Foal are hereby appointed commissioners to locate, survey and establish a territorial road from Table Rock, Pawnee county, by way of the bridge near Table Rock Mills, to a point on the east line of said county, and intersecting the territorial road running westward from St. Stephens to said military road before mentioned.

SEC. 3. The commissioners shall be allowed three dollars per day each for their services, to be paid by the county; and the said commissioners shall file a plat of said road with the county clerk, and after the filing of such plat the road therein described shall be deemed a lawful road.

SEC. 4. All timbers prepared for the construction of a bridge across the Great Nemaha river, on the road hereinbefore vacated, and belonging to the road district wherein said bridge was located, shall be used and employed in repairing the bridge across the Great Nemaha river, near the Table Rock Mills.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT for the location of a Territorial Road from Dakota City, *via* De Witt, to West Point, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That on or before the first Monday in July, 1866, the county commissioners of Dakota county shall appoint two commissioners, and the county commissioners of Cuming county shall appoint one commissioner to locate and establish a territorial road from Dakota City in Dakota county, *via* De Witt, to West Point in Cuming county, Nebraska territory,

SEC. 2. It shall be the duty of the county clerks of the aforesaid counties, to give a written notice to said road commissioners of their appointment, immediately after the same has been made, which said road commissioners shall, within ten days after receiving such notice, file their acceptance of such appointment, and if such acceptance be not filed within the time specified, the appointment shall be considered null and void, and the county commissioners shall proceed to make other appointments.

SEC. 3. The said road commissioners, or any two of them, shall meet at Dakota City on the twenty-first day of July, 1866, and proceed to locate and establish said road as hereinbefore designated, having full power to employ a surveyor, provided neither of said commissioners be a surveyor, and the necessary number of assistants and teams, and to incur whatever additional expense may be absolutely necessary for the location and establishment of said road.

SEC. 4. Said road commissioners shall make a written report of their doings in the premises, and furnish a map of said road to the county clerks of said counties, to be filed in the offices of such clerks within thirty days after the completion of said survey and location of said road.

SEC. 5. The expense of locating and establishing said road shall be borne equally by said counties, and the expense of locating, establishing and maintaining the same, upon the Omaha and Winnebago Reservations, shall also be paid in equal amounts by said counties: *Provided*, That the expense of maintaining said road on said reservations shall be paid out of the general road fund of the respective counties, under the supervision of the road supervisors of the districts in said counties adjoining said reservations through which said road passes.

SEC. 6. The expense of locating and establishing said road shall be paid out of the general road fund of the respective counties; and for the purposes of this act, so far as may be necessary in maintaining said road upon said reservations, the action of the county commissioners of said counties shall be excepted from the operation of all statutes limiting the issue of warrants for road or bridge purposes.

SEC. 7. Said commissioners shall receive three dollars per day, and the surveyor four dollars per day, for each day actually employed in locating said road.

SEC. 8. The accounts for all services in locating and establishing said road, shall be made out in duplicate and certified under oath by said commissioners, or a majority of them, and filed with the county clerks of each of the said counties at the same time that the map of the road is filed as hereinbefore provided; and when said accounts have been so filed, the county commissioners of said county shall, at their first regular or special session thereafter, issue their proportion of warrants to the respective claimants, according to the provisions of this act.

SEC. 9. The county commissioners of said counties, in order to provide against vacancies or other contingencies, shall, for the purpose of this act, have full power in the premises until the first Monday in January, 1868, inclusive, and the commencement of said work herein specified at the time fixed in section three of this act, shall not be deemed essential to the validity of the action of said road commissioners, nor shall a failure to meet at such time and place work a forfeiture of any of the rights or powers under this act; but they may meet upon any other day within the period herein limited.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved February 6, 1866.

AN ACT to locate a Territorial Road from Fremont, Dodge County, by way of DeWitt, Cuming County, to John Oak's Place, Burt County, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That E. H. Barnard and H. C. Campbell, of Dodge county, and H. A. Samson, of Cuming county, are hereby constituted a board of commissioners for the purposes hereinafter specified.

SEC. 2. That the said board of commisioners shall, on before the first day of July next, or as soon thereafter as is practicable, meet at Fremont, Dodge county, and after subscribing an oath or affirmation to faithfully discharge the duties as required of them in this act, proceed to locate and establish a territorial road on the most practicable route from Fremont, Dodge county, by way of DeWitt, Cuming county, to John Oak's place, in Burt county.

SEC. 3. That the said board of commissioners may procure the aid of a competent surveyor and such other assistants as may be necessary to carry into effect the provisions of this act.

SEC. 4. The said commissioners shall each be allowed the sum of three dollars per day, and the surveyor four dollars per day, for each day so employed in locating said road.

SEC. 5. That the said commissioners shall, within thirty days from the time of locating said road, cause to be filed with the clerks of the respective counties in which said road has been located, a correct map of the same.

SEC. 6. That the expenses accruing from the location of said road, shall be paid by the several counties in which said road shall be located, in proportion to the length of road in each. And the county commissioners of the several counties as aforesaid are hereby authorized to pay such expenses out of any road funds belonging to said counties, which shall not be otherwise appropriated.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to locate a Territorial Road from Decatur in Burt County, to Fremont in Dodge County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William Bates and John Oak, of Burt county, and George Wagner, of Washington county, be and are hereby appointed commissioners to locate a territorial road from Decatur, running on the most practicable route, to Logan Creek Valley, on the township line between Ranges eight (8) and nine (9) east, thence down said valley on the most practicable route to Logan Mill, in Washington county; thence to Fremont, in Dodge county.

SEC. 2. That said commissioners, or any two of them, shall, on or before the first Monday of June, A. D. 1866, or within four months thereafter, meet at the county clerk's office in Tekamah, and after taking and subscribing an oath or affirmation to faithfully and impartially discharge their duties as required of them in this act, shall then proceed to view and locate said road.

SEC. 3. That said commissioners are authorized to employ one competent surveyor, two chain carriers, teams and teamsters, and other assistants as may be necessary to complete the said survey and location of said road.

SEC. 4. That when said road shall be so laid out and established, said commissioners shall mark or cause to be marked, with a plain furrow or mound, the centre of said road, and the same commissioners shall, within thirty days after the location of the same, make a report of their doings, and furnish a plat of said road to the clerks of the counties through which it shall pass, who shall cause the same to be recorded in their respective offices.

SEC. 5. The commissioners shall be allowed the sum of three dollars per day; the surveyor four dollars per day; chain carriers two dollars per day; team and teamsters four dollars per day, and other assistants two dollars per day each, for time necessarily employed.

SEC. 6. That all costs and expenses accruing in the location of said road, shall be paid by the respective counties through which it may pass, in proportion to the distance in each.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to locate a Territorial Road from Ponca, Dixon County, to Neobrarah, L'Eau qui Court County, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That L. T. Hill, Henry Felber and Thomas N. Paxton, are hereby appointed commissioners to locate a territorial road from Ponca, Dixon county, by way of Ionia, Dixon county, St. James, St. Helena, Elm Grove, Cedar county, and Frankfort, L'Eau qui Court county, to Neobrarah, L'Eau qui Court county.

SEC. 2. The said commissioners, or a majority of them, shall meet, on or before the first day of November, A. D. 1866, at Ponca, Dixon county, and proceed to locate said road in accordance with this act, and shall make their return according to law, on or before the first day of December, 1866.

SEC. 3. Said commissioners shall each be allowed three dollars per day for the time necessarily employed in locating said road, and shall have power to employ as many assistants as may be necessary in locating said road, who shall be allowed two dollars per day, for their services, except surveyors.

SEC. 4. That all reasonable expenses incurred in accordance with this act, shall be defrayed by the counties through which the said road may pass.

SEC. 5. After the road has been duly located and the survey thereof completed, the said commissioners shall make out and sign a report of their proceedings, showing the field notes and location of said road, and file a copy of the same with the county clerks of the counties through which the road may pass.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved February 9, 1866.

AN ACT to locate a Territorial Road from St. Deroin, to intersect a Territorial Road from Falls City to Nemaha City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Daniel Fraker, W. D. Scott and William R. Cain be and are hereby appointed commissioners to locate and establish a territorial road, commencing at Fraker's Mill, St. Deroin, Nemaha county, and intersecting a territorial road leading from Falls City, Richardson county, to Nemaha City, Nemaha county, at the most practicable point.

SEC. 2. The said commissioners, or any two of them, shall meet at St. Deroin on the first Monday in April, A. D. 1866, or within three months from that date, and proceed to lay out and establish said road according to the provisions of this act.

SEC. 3. Said commissioners shall have power to employ one competent surveyor, a necessary number of assistants and teams, and to incur whatever other expenses may be necessary for the location of said road.

SEC. 4. Said commissioners shall make a report of their doings, and furnish a map of said road to the county clerks of the different counties through which it may pass, to be filed in the office of such clerks within thirty days after locating said road.

SEC. 5. That the expenses of locating and establishing said road shall be paid by the counties through which it may pass, in equal proportion.

SEC. 6. Said commissioners shall receive three dollars per day, and the assistants two dollars per day, for each day actually employed in locating said road.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved February 1, 1866.

AN ACT to legalize the Acts of Commissioners appointed to locate a Territorial Road from Simpson's Landing, *via* Tekamah, in Burt County, to Logan Creek Mills, in Washington County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the acts of the commissioners in the location of the territorial road authorized to be located by them from Simpson's Landing, *via* Tekamah, in Burt county, to Logan Creek Mills in Washington county, under an act of the legislative assembly of said territory, approved February 13, 1865, be and the same are hereby legalized, and declared a lawful road, the same as if such location had been made in strict conformity with the provisions of said act.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 20, 1866.

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RELATING TO STOCK.

AN ACT to restrain Stock from running at large in Delaware, McWilliams, Syracuse and Hendricks Precincts, Otoe County, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all cattle, horses, mules, sheep, swine or stock of any kind, are hereby restrained from running at large in Delaware, McWilliams, Syracuse and Hendricks precincts, in Otoe county, Nebraska territory, and the owner of any stock shall pay all damages by such stock committed, and any person sustaining damages by stock, shall have a lien upon the stock committing such damage, for the full amount of damages committed, together with the costs of collection.

SEC. 2. That when any such stock shall be found on or about the premises where the damage was committed, it shall be lawful for the owner or occupant of the premises or the person sustaining damages by such stock, to take such stock into custody, and shall notify the owner thereof if known, within two days, personally, or by a written notice left at his usual place of abode, requiring him to forthwith take the said stock, after paying all damages and costs to the taker up.

SEC. 3. In case the parties cannot agree as to the amount of damages, each party may choose a person having the qualifications of electors, and in case either party refuse or neglect to choose a person as aforesaid, then the nearest justice of the peace shall appoint a person instead, and in case the two persons so chosen or appointed as the case may be, cannot agree, they shall choose a third person, and the appraisers so chosen or appointed as aforesaid shall proceed to assess the damages, receiving therefor one dollar each; and the said appraisers, or a majority of them, shall make an award in writing, which award may be filed with the nearest justice of the peace and shall operate as a judgment at law, and execution may issue thereon, as now provided by law for the issuing and collection of executions on judgments rendered in justices' courts. When the amount of damages and costs assessed exceeds one hundred dollars, then said award may be filed with the clerk of the district court of the county in which such action accrued, who shall have power to issue execution upon said award, as now provided by law for the issuing of executions upon judgments rendered in the district courts.

SEC. 4. In all cases of damages committed upon unenclosed lands having agricultural improvements thereon, the person claiming such damage shall not have a right to recover the same as provided in this act, unless there is at least one hundred forest trees growing, and ten rods of good post and board, rail, stone, hedge or live fence for every five acres of land in cultivation upon the premises whereon the damages were committed: *Provided*, That any person may have twelve months from the date of settlement, or from the time that this act takes effect, to comply with the provisions of this section.

SEC. 5. Any person shall have a right to recover damages committed upon uncultivated lands, upon breaking a strip at least one rod wide around the entire tract, and planting within said strip so broken, at least two forest trees for every rod in length so broken, or, in lieu of the forest trees, hedge or live fence.

SEC. 6. In case the owner of any stock committing damage is not known to the taker up, then theperson sustaining damage shall proceed as now provided by law regulating estrays.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to restrain Stock from running at large in Cuming County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That from and after the first day of May to the first day of December, horses, cattle, mules, sheep and swine, shall be restrained from running at large during day or night in Cuming county, and the rest of the year during the night time only..

SEC. 2. That when any stock shall be found upon the premises of another, it shall be lawful for the owner or person in possession of such premises to impound said stock, and if the owner of said stock can be found, it shall be the duty of said taker up to notify him within two days by personal service, or by a written notice left at his usual place of residence with some member of his family over the age of fourteen years, of the taking up of said stock, describing it, and requiring him to forthwith take the said property, after making full payment of all damages and costs to the taker up.

SEC. 3. In case the parties cannot agree as to the amount of damages and costs, either party may choose a man, and in case either party refuses to choose a man, then the nearest justice of the peace shall choose a man instead, and in case the two men chosen cannot agree, then they shall choose a third man, and the men so chosen shall be a board of arbitrators, and after being duly sworn as such, shall, or a majority of them, proceed to assess the damages, possessing for that purpose the general powers of arbitrators, and the said arbitrators shall make an award in writing and their decision shall be final, from which there shall be no appeal by either party, a copy of which award shall be filed with the nearest justice of the peace in the county, and shall operate as a judgment at law, and execution shall issue thereon at the request of either party as in other cases.

SEC. 4. If the owner of any stock taken up under the provisions of this act shall fail to appear and pay all damages and costs as aforesaid, to the taker up, after two days notice of such decision, the taker up shall have full power and authority to sell such trespassing animal or animals, by giving six days notice, by posting up three written notices in different parts of the precinct, of the time and place of sale, or so many thereof as may be necessary to pay the damages and costs arising by virtue of such taking up and sale, and the surplus, if any, to be paid to said justice of the peace, and by him held subject to the order of the owner of stock so sold.

SEC. 5. In case the owner of said stock is not known to the taker up of said stock, the taker up shall proceed as is provided by law for estrays.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to restrain Stock from running at large in Plattford and Forest City Precincts, Sarpy County, Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That from and after the passage of this act it shall be unlawful for cattle, horses, mules, sheep, swine and other stock, to run at large in the Plattford and Forest City precincts of Sarpy county, Nebraska, from the first day of April to the first day of December.

SEC. 2. That when such stock shall be found upon the premises of another, it shall be lawful for the owner or person in possession of such premises to impound said stock, and if the owner can be found and is known to the taker up, it shall be the duty of the taker up aforesaid to notify him within two days by personal service, or by leaving a written notice at his usual place of residence, with some member of his family over the age of fourteen years, of the taking up of said stock, describing it, and requiring him to forthwith take the said stock, after making full payment of the damages and costs to the taker up.

SEC. 3. In case the parties cannot agree as to the amount of damages and costs, each party may choose a man, and in case either party refuses so to choose, the nearest justice of the peace of the precinct shall choose a man instead, and in case the two men chosen cannot agree they shall choose a third, who, after being duly sworn for the purposes within, the three, or a majority of them, shall proceed to assess the damages, possessing for that purpose the general powers of arbitrators, and the said arbitrators shall make an award in writing and their decision shall be final; a copy of which award shall be filed with the nearest justice of the peace in said precinct, and shall operate as a judgment at law, and execution shall issue at the request of the party in whose favor said award was found, for the collection of damages and costs as in other cases.

SEC. 4. And if the owner fail to appear and pay all damages and costs as aforesaid to the taker up, after two days notice of such decision, the taker up shall have the full power and authority to sell such trespassing animal or animals by giving six days notice thereof, by posting up three written notices of the time and place of sale. So many of said animals shall be sold as shall be sufficient to pay all damages and costs arising by virtue of such taking up and sale, and the surplus, if any, to be paid to the said justice of the peace, to be held by him subject to the order of the owner of the stock sold.

SEC. 5. In case the owner of said stock is not known to the taker up of said stock, he shall in such case proceed as provided by law regulating estrays.

SEC. 6. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 7. This act shall be in force and effect from and after its passage.

Approved February 12, 1866.

AN ACT to establish a Herd Law for Salt Creek and South Bend Precincts, Cass County, and fraction of Township number Thirteen north, of Range number Nine east, in Saunders County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all cattle, horses, mules, asses, sheep and swine, are hereby restrained from running at large in Salt Creek and South Bend precincts, Cass county, and fractional Township number thirteen (13) north, of Range number nine (9) east, in Saunders county.

SEC. 2. The owner or owners of said stock permitting the same to run at large in violation of the provisions of this act, shall be liable to the person or persons injured by said stock, in double the actual value of any property destroyed or injury committed by the same, if shown to have been done between the time of sunset and sunrise; but if said destruction or injury were committed in the day time, then the owner of said stock shall be liable only for actual damage to said property.

SEC. 3. The person or persons injured by such destruction, or other damage done to his property, shall have a lien on the stock committing the same, until such damage is fully paid and compensated, and in case the parties to such claim cannot agree, then the amount of such damage shall be decided by arbitration.

SEC. 4. When such damage shall have been committed upon the property of any person in the aforesaid precincts or townships, the said person may impound said stock and shall notify the owner of the same, if known, in writing, specifying such particulars as are pertinent to the case; whereupon the owner shall select one disinterested person to serve as arbitrator on his part, the person whose property has been injured shall select one, and if said arbitrators cannot agree upon the amount of such damage, they shall select a third, and the decision of any two of the board shall be final in the premises.

SEC. 5. That if the owner of said stock shall fail or refuse to make the adjustment provided for in sections three and four of this act, and pay the damage, then the party injured may obtain redress by legal process as in other cases: *Provided*, That if he shall not recover more damage than may be tendered him by the owner of said stock, then he shall pay all costs for prosecution.

SEC. 6. That the arbitrators referred to in section four of this act, shall receive one dollar each for their services, to be collected in the same manner as the damages.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to amend an Act entitled " An Act to restrain Stock from running at large in Hall County, and in Kelley Precinct, Douglas County, Nebraska Territory, a" pproved February 15, 1864.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the above entitled act be and the same is hereby amended as follows: In the sixth line of section one (1), strike out the word '' county,'' and insert the words '' and Merrick counties.''

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1866.

AN ACT to repeal all Acts restraining Stock from running at large in Monroe Precinct, Platte County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all laws restraining stock from running at large in Monroe precinct, Platte county, Nebraska, be and are hereby repealed so far as relates to said precinct.

SEC. 2. This act to take effect from and after the first day of May, A. D. 1866.

Approved February 12, 1866.

AN ACT to amend Section One of an Act to restrain Bulls from running at large in the Counties of Cedar, Dixon, Dakota and Pawnee, and Precinct of North Bend and Dodge County, N. T., approved February 13, 1865.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That section one of an act entitled '' An Act to restrain bulls from running at large in the counties of Cedar, Dixon, Dakota and Pawnee, and precinct of North Bend and Dodge county, N. T.,'' approved February 13, 1865, be and the same is hereby amended by striking out the following words in the fourth line, to wit: '' Cedar, Dixon, Dakota and.''

SEC. 2 This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to restrain Cattle from running at large at night, in Jones County, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all neat cattle are hereby restrained from running at large during the night time in Jones county, from the first day of July until the first day of December; and the night shall be considered from the close of daylight in the evening to the commencement of daylight in the morning.

SEC. 2. That all damages to property committed by such cattle so running at large shall be paid by the owner of such cattle; and the person whose property is damaged thereby, may have a lien upon said animals for the full amount of damages and costs, and enforce and collect the same by the proper civil action.

SEC. 3. This act shall take effect and be enforced from and after its passage.

Approved February 12, 1866.

AN ACT to repeal an Act to amend an Act, etc., relative to a Herd Law in Richland and Fontenelle Precincts, approved February 10, 1864, so far as the same relates to Richland Precinct.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An Act to amend an act entitled 'An Act to restrain cattle, sheep and swine from running at large in Richland and Fontenelle precincts, in Washington county,'" approved February 10. 1864, be and the same is hereby repealed so far as the same relates to Richland precinct; and an act entitled "An Act to restrain cattle, sheep and swine from running at large in Richland and Fontenelle precincts, in Washington county, Nebraska territory," approved January 11, 1861, is hereby declared valid and in full force in said Richland precinct.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1866.

AN ACT to repeal an Act entitled "An Act to restrain Cattle from running at large in St. John's Precinct, Dakota County, Nebraska Territory."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An Act to restrain cattle from running at large in St. John's precinct, Dakota county," approved February 7, 1865, be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 24, 1866.

AN ACT to make the Owners of Stock accountable for the Damages they may do upon cultivated Lands.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That any person letting cattle, horses, mules, sheep or stock of any kind, run at large in Glenrock or Lafayette precincts in Nemaha county, territory of Nebraska, shall be accountable for all damage said stock shall commit upon cultivated lands in said precincts, without regard to fence.

SEC. 2. Any person sustaining damages upon cultivated lands by reason of such stock so running at large, shall have a lien upon said trespassing stock for the amount of said damage.

SEC. 3. It shall be lawful for any person so sustaining damage to take such trespassing stock into custody, and if he shall know the owner or owners thereof, he shall notify him or them by leaving a written notice at the place of residence of such person or persons, either in person or by another, of the amount of damages so done, and for the owner or owners thereof to immediately pay all damages and take said stock away.

SEC. 4. In case the parties cannot agree upon such damages, or in case the owner of such animals neglects or refuses to pay such damages, with costs of taking up the same, the party sustaining such damage shall proceed to dispose of such animals as provided by the law relative to estrays.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

MISCELLANEOUS.

AN ACT making Appropriations for Legislative Expenses, and for other purposes, for the Year A. D. 1866.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following sums of money, or so much thereof as may be necessary, be and the same are hereby appropriated for the payment of the following claims for legislative and other expenses for the year 1866, as follows:

William E. Harvey, chief clerk of the council	$200.00
George May, chief clerk of the house	200.00
A. H. Burke, engrossing clerk of the council	160.00
S. F. Burtch, engrossing clerk of the house	160.00
O. T. B. Williams, enrolling clerk of the council	160.00
A. F. Harvey, enrolling clerk of the house	160.00
Philo Judson, fireman of the council	120.00
George Medlock, fireman of the house	120.00
Ernest Stang, page for the council	75.00
Albert Van Camp, page for the council	75.00
Thomas Johnson, page for the house	75.00
D. Myers, page for the house	75.00
Augustus Kountze, territorial treasurer	400.00
John Gillespie, territorial auditor	900.00
Robert S. Knox, territorial librarian	400.00
Robert S. Knox, adjutant-general	300.00
Rev. Henry W. Kuhns, chaplain of the council	60.00
Rev. Wm. H. VanAntwerp, chaplain of the house	60.00
Fuel, stationery, postage and lights for the auditor's office	75.00
Fuel, stationery, postage and lights for the treasurer's office	50.00
Furnishing books and blanks to county officers, by the auditor, under the provisions of "An Act to revise an act to provide for the valuation and assessment of the real and personal property, and for the levying and collection of taxes in the territory of Nebraska"	1,000.00
A. G. White and W. B. Roper, for furnishing five hundred and fifty rations to company "C," first Nebraska militia, between the tenth and twenty-first days of September, A. D. 1864	75.00
M. J. Mumford, for three days work, man and team, for Captain White's company "C," first Nebraska militia, in April, 1865	15.00
Porter and Duell, freight and charges on five boxes of ordnance stores	12.50
William F. Fowler, for transportation supplies, ten days, at five dollars per day	50.00
William Rotton, for cleaning guns, pistols, etc., and for caps, ammunition, etc	186.25
Jacob Shaw, for shoeing horses	15.00
Samuel Dimmick, for shoeing horses	45.00
William Schellinger, for shoeing horses	13.00
For supporting the insane for the year 1866	2,000.00
To Levi Anthony, for medical services	30.00
To Albert Toll, for forage	5.00
To O. P. Mason, paid Joseph Cline, for forage	18.75
For furnishing auditor's office with abstract of lands from district land offices	75.00
For fuel, lights, stationery and postage for territorial librarian	60.00
For binding five vols. each of laws and journals	20.00
For binding four vols. of newspapers	12.00
For shelving for library room	20.00
For furniture, set of chairs and step ladders	30.00
For express charges and postage on books exchanged	80.00
For record books for adjutant-general's office, and postage for the past year	21.25
To Conrad Scheafer, for translating the governor's message into German	50.00
To Noble R. Hays, for services and money expended under direction of the governor, and by his order, in arming and preparing the militia called out under the proclamation of Governor Saunders, August 11, 1864	300.00

To Benjamin F. Ferguson, for use of two horses and wagon, 159 days, in transporting supplies for company "C," first Nebraska militia	$100.00
To William J. Dunn, for team and wagon, 134 days, transporting supplies for company "C," first Nebraska regiment	402.00
To Charles Russ, for transporting supplies for company "C," first Nebraska militia	450.00
To O. P. Mason, for beef furnished militia	16.60
To Henry P. Duel, assistant enrolling clerk of council	160.00
To Experience Estabrook, for assisting revising committee	200.00
To John Gillespie, assistant engrossing clerk of council	75.00
To Samuel Coe, assistant engrossing clerk of council	8.00
To M. McCoy, assistant engrossing clerk of council	60.00
To Charles P. Birkett, assistant engrossing clerk of house	60.00
To Christen Lusk, sergeant-at-arms, for services in attending committee	18.00
As much as may be needed thereof for extra help under the certificates of the committee of enrolling	75.00
To Thomas L. Sutton, for balance of certificates of indebtedness	47.50
To Thomas L. Sutton, for arresting Thomas P. Hunt at St. Joseph, and bringing him to Omaha	100.00
To Thomas L. Sutton, for maintaining Thomas McKnight	154.50
To Thomas L. Sutton, for maintaining Thomas McKnight, and medical services	120.00
To Andrew Dellone, for maintaining Thomas P. Hunt	22.50
For deficiency of the appropriations of last year for books and blanks for county officers	500.00

SEC. 2. The territorial auditor is hereby authorized, upon the evidence being presented that the parties for whom appropriations are made by this act, performed the labor contemplated, or the sums therein appropriated have been justly expended, and are entitled to the amount demanded, and upon their making affidavit, provided no such claim shall be paid unless certified to as correct and just by the company and brigade commanders, as well as the sworn affidavit by the person claiming the same, or his legal representatives, that the claim is just, and that they are entitled to the full amount claimed, to draw a warrant upon the treasurer for the amount, which warrant shall give the name of the person and the service for which the warrant was given.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT to create a Board of Immigration, and to encourage Immigration to Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That there is hereby created a board of immigration, which shall be composed of five members, four of whom shall be appointed by the governor, one from the northern, one from the southern and one from the western portion of the territory.

SEC. 2. The governor of the territory shall be *ex officio* a member and the presiding officer of said board. A majority of said board shall constitute a quorum for the transaction of business, and its duty shall be to adopt and put in execution all such measures as will best promote and encourage immigration to said territory from the United States, Canada and Europe.

SEC. 3. Said board of immigration shall meet in the city of Omaha on the 14th day of February instant, for the transaction of such business as they may deem necessary. And other meetings may be held at such times and places within the territory as a majority of its members may determine.

SEC. 4. At its first meeting, said board shall elect by ballot, from their own number, a corresponding and recording secretary and a treasurer.

SEC. 5. The treasurer of said board shall, before entering upon the duties of his office, give a bond to the territory of Nebraska, in such sum as the board shall determine, but not less than four thousand dollars, with security to be approved by the governor, conditioned for the faithful performance of his duties, and truly to account for all moneys which may come into his hands as such treasurer, which bond shall be deposited with the secretary of the territory for safe keeping.

SEC. 6. For the purpose of inducing and encouraging immigration into said territory, the said board shall from time to time publish and disseminate, in both the English and German languages, all such useful information as they can obtain concerning the developed and undeveloped, and agricultural and mineral resources of Nebraska, and describing in a true light our facilities for railroad connections, navigation and commerce.

SEC. 7. Said board shall have power to appoint an agent to such place or places in the United States and Canada as they may determine, for the purpose of aiding and advising immigrants to Nebraska; said agent shall be able to converse freely in at least the English and German languages. He shall act solely under the direction of the board of immigration, and shall receive such compensation for his services, to be paid out of the fund created for the use of the board as they shall deem just and reasonable.

SEC. 8. Said board is also authorized to open books of subscription and solicit donations and contributions of money from corporations, manufacturers, merchants and all other persons willing to aid, or interested in the flow of immigration, which money so donated or contributed shall be under the control of and expended by said board for immigration purposes.

SEC. 9. The sum of two thousand dollars is hereby appropriated, out of the territorial treasury, out of any moneys not otherwise appropriated, for the use of said board of immigration, to be expended by them in such manner as will in their opinion best promote the object of this act. And the territorial auditor is hereby authorized and required to draw an order upon the territorial treasury in favor of said board of immigration for that amount, and deliver the same to the treasurer of said board and take his receipt therefor.

SEC. 10. It shall be the duty of said board to co-operate with the immigration bureau at Washington City and to make regular annual reports of all the doings of the board to the legislature of Nebraska on or before the tenth day of its session.

SEC. 11. In case of a vacancy in said board, it shall be filled by appointment by the governor, and the said board shall at all times be subject to such rules and regulations as the legislature shall from time to time prescribe.

SEC. 12. The members of said board of immigration shall receive no compensation for their services, but all their reasonable expenses incurred in attending the meetings of the board, shall be paid out of said immigration fund.

SEC. 13. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 14. This act shall take effect and be in force from and after its passage.

Approved February 12, 1866.

AN ACT relative to Claims for Military Services.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all persons having claims against the territory of Nebraska for services rendered in and to the militia of Nebraska, shall present the same, with the necessary proof, to the auditor of Nebraska on or before the first day of July, 1866, or forever be debarred from the same.

SEC. 2. The auditor of the territory shall file all the claims thus presented, with the vouchers, and shall present the same to the legislature at its next session on or before the second day of its session.

SEC. 3. This act shall be published three weeks in succession, in each weekly newspaper that is published in this territory, under the direction of the said auditor.

SEC. 4. This act shall take effect and be in force from and after its passage,

Approved February 12, 1866.

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Township No. nine (9) north, of Range No. six (6) east of the sixth principal meridian, in Lancaster county, Nebraska, 726.
An act to locate a territorial road from the north line of the city of Omaha, to intersect the territorial road running to Fort Calhoun, in Washington county, 727.
An act to change the location of a portion of the territorial road leading from St. Stephens to a point on the military road from Leavenworth to Fort Kearney, 727.
An act for the location of a territorial road from Dakota City, *via* De Witt, to West Point, Nebraska, 728.
An act to locate a territorial road from Fremont, Dodge county, by way of De Witt, Cuming county, to John Oak's Place, Burt county, Nebraska, 729.
An act to locate a territorial road from Decatur in Burt county, to Fremont in Dodge county, 729.
An act to locate a territorial road from Ponca, Dixon county, to Neobrarah, L'Eau qui Court county, Nebraska territory, 730.
An act to locate a terrtorial road from St. Deroin, to intersect a territorial road from Falls City to Nemaha City, 730.
An act to legalize the acts of commissioners appointed to locate a territorial road from Simpson's Landing, *via* Tekamah, in Burt county, to Logan Creek Mills, in Washington county, 731.

RELATING TO STOCK.

An act to restrain stock from running at large in Delaware, McWilliams, Syracuse and Hendricks Precincts, Otoe county, Nebraska Territory, 731.
An act to restrain stock from running at large in Cuming county, 732.
An act to restrain stock from running at large in Plattford and Forest City Precincts, Sarpy county, Nebraska, 732.
An act to establish a herd law for Salt Creek and South Bend Precincts, Cass county, and fraction of Township number thirteen north, of Range number nine east, in Saunders county, 733.
An act to amend an act entitled "An Act to restrain stock from running at large in Hall county, and in Kelley Precinct, Douglas county, Nebraska territory," approved February 15, 1864, 734.
An act to repeal all acts restraining stock from running at large in Monroe Precinct, Platte county, 734.
An act to amend section one of an act to restrain bulls from running at large in the counties of Cedar, Dixon, Dakota and Pawnee, and Precinct of North Bend and Dodge county, N. T., approved February 13, 1865, 734.
An act to restrain cattle from running at large at night, in Jones county, Nebraska territory, 734.
An act to repeal an act to amend an act, etc., relative to a herd law in Richland and Fontenelle Precincts, approved February 10, 1864, so far as the same relates to Richland Precinct, 735.
An act to repeal an act entitled "An Act to restrain cattle from running at large in St. John's Precinct, Dakota county, Nebraska territory," 735.
An act to make the owners of stock accountable for the damages they may do upon cultivated lands, 735.

MISCELLANEOUS.

An act making appropriations for legislative expenses, and for other purposes, for the year A. D., 1866, 736.
An act to create a board of immigration, and to encourage immigration to Nebraska, 737.
An act relative to claims for military services, 738.